

THE CONTRACTORS STATE LICENSE BOARD

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE 1999 REPORT SUBMITTED TO THE DEPARTMENT OF CONSUMER AFFAIRS

*Overview of the Board's Regulatory Program,
Board's Response to Issues and Recommendations from
Prior 1996 Review, and Background Paper for the
1999 Sunset Review Hearing*

Senator Liz Figueroa
Chair

Senate Members
Maurice Johannessen
Richard Polanco

Assembly Members
Elaine Alquist
Bill Campbell
Mike Honda

Staff:
Bill Gage, Senior Consultant

Staff Assistance Provided By:
Mark Rakich, Chief Counsel
Senate Business and Professions Committee

Jay DeFuria, Principal Consultant
Senate Business and Professions Committee

Sailaja Cherukuri, Principal Consultant
Senate Business and Professions Committee

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PART 1.

CONTRACTORS STATE LICENSE BOARD

BACKGROUND INFORMATION AND OVERVIEW

BACKGROUND AND DESCRIPTION OF THE BOARD AND THE REGULATED PROFESSION

History of the Board and Regulation of Contractors

The Legislature established a Contractors License Bureau in 1929, under the Department of Professional and Vocational Standards¹ to protect the public from irresponsible contractors. In 1935, the mission and duties of the agency were placed under the auspices of a seven member Board. From 1960 through 1975, the Board was increased to thirteen members.

The legal and regulatory role of the Board has changed over the years since the Board's creation. Initially, applicants were not issued specific license classifications. Instead, applicants simply indicated the type of construction work that would be performed under the license, and the license was issued without any examination or experience requirements.

In 1938, the Legislature made it mandatory that applicants for contractors' licenses be examined for competence in their designated fields. By 1947, the Board had been given authority to establish experience standards and to adopt rules and regulations to affect the classification of contractors "*in a manner consistent with established usage and procedure as found in the construction business, and. . . limit[ing] the field and scope of operations of a licensed contractor to those in which he or she is classified and qualified to engage. . .*"

The mission of the Contractors State License Board (CSLB) is to protect consumers by regulating the construction industry through policies that promote the health, safety, and general welfare of the public in matters relating to construction. The Contractors State License Board accomplishes this by:

- Ensuring construction is performed in a safe, competent and professional manner through licensing of contractors and enforcement of the licensing laws;
- Providing resolution to disputes that arise from construction activities; and
- Educating consumers so that they may make informed choices.

¹ The Contractors State License Board is now under the Department of Consumer Affairs.

CSLB serves three primary user groups:

- Consumers of contracting services;
- General public; and
- Contractors.

Board Composition

The Board presently comprises thirteen members. It has a public majority with seven public members and six professional members.

The details of the Board's composition are:

- Seven members representing the public, one of whom shall be an active, local building official;
- One general engineering contractor;
- Two general building contractors;
- Two specialty contractors; and
- One member representing a building trades labor organization.

The Governor appoints eleven members of the Board. The Assembly Speaker and the Senate Rules Committee appoint one public member each.

Licensing Data

The Board regulates 41 license classifications and 3 certifications under which members of the construction industry practice their trades and crafts. A license may be issued to an individual, partnership, corporation, or joint venture. All licenses must have a qualifying individual. A qualifying individual is the person listed on the CSLB records who satisfies the experience and examination requirements for a license. Depending on the type of license, the qualifying individual must be designated as an owner, responsible managing employee, responsible managing officer, or qualifying partner on the license records. A qualifying individual is required for every classification on each license issued by the CSLB. The Board also registers persons engaged in the sale of home improvement goods and services.

As of June 30, 1999, there were 280,557 licensed contractors and registered home improvement salespersons. Licenses for contractors are described within three

basic branches of contracting business as defined by statute and by the rules and regulations of the Board. Those basic branches are:

- General engineering contracting (Class “A”), who build infrastructure;
- General building contracting (Class “B”), who build buildings - housing, commercial, office, etc.; and
- Specialty contracting (Class “C”), who often subcontract with As and Bs, such as painters, plumbers, electricians, etc.

Table 1 describes CSLB’s licensed population over the past four years.

Table 1 – Licensing Data

LICENSING DATA	1995-96	1996-97	1997-98	1998-99
Total Licensees	276,583	269,044	273,566	280,557
Active	205,250	201,227	206,833	215,494
Inactive	71,333	67,817	66,733	65,063
Total Applicants	26,503	23,763	24,450	25,398
Exams	13,878	12,135	12,610	12,900
Waiver of Exam	7,267	7,021	7,270	7,815
Add Classification/Change Qualifier	5,358	4,607	4,570	4,683
Applications Denied	372	330	380	271
New Licenses Issued*	16,919	14,693	15,361	17,620
Classifications Granted	18,725	16,153	17,030	17,689
General Engineering Contractor "A"	1,127	1,017	1,095	1,091
General Building Contractor "B"	6,916	5,884	6,284	6,493
Specialty Contractors "C"	10,682	9,252	9,651	10,105
Renewals Received	111,550	122,252	116,453	111,501
Certifications	776	556	482	3,293**
Individual Inquiries	1,262,249	1,304,179	1,549,130	2,045,448
Telephone	1,262,249	1,304,179	1,275,912	1,159,518
Internet	N/A***	N/A	273,218	885,930

* The number of new licenses issued does not match the total number of applicants less the number denied. Some applications are voided and, therefore, are not issued or denied. There are several reasons for voiding an application, including: (1) additional information is requested and the applicant fails to provide it within 90 days; (2) applicant fails the exam three times; (3) applicant fails to appear for the exam, and does not reschedule within 90 days; and (4) applicant fails to appear for the exam the second time after being rescheduled (Business and Professions Code 7074)

** For FY 1998/99 the increase of certifications results from the new Home Improvement Certification program. (Business and Professions Code § 7150.2)

*** N/A: Not Applicable.

BUDGET AND STAFF

Current Fee Schedule and Range

The Contractors' Board receives no general fund support, relying solely on fees set by statute. The renewal and original application licensing fees were increased effective January 1994. Before this increase, fees had not been increased since 1982. The Board's current fee structure is as follows:

Table 2 – Fee Schedule

Fee Schedule	Current Fee	Statutory Limit
Original Application (Examination)	\$250	\$250
Initial License Fee	150	150
Additional Class	50	50
Replacing the Qualifier	50	50
Home Improvement Salesperson Registration	50	50
Home Improvement Renewal	75	75
Asbestos Certification Application	50	50
Hazardous Substance Removal Application	50	50
Active Renewal (2 year cycle)	300	300
Inactive Renewal (4 year cycle)	150	150
Rescheduling Fee	50	50
Delinquency Fee	25	50% of renewal fee, not to exceed \$25

Revenue and Expenditure History

Application, license and renewal fees compose nearly all the Board's revenue. The Legislature and the Board authorized a \$100 credit against renewal and reactivation fees during fiscal years 1997-98 and 1998-99. The purpose of the credit was to diminish the Board's surplus. Anticipated FY 99/00 of about \$42.4 million are offset by projected expenditures of 42.1 million. Reserves are anticipated to be 18.4 million.

Expenditures by Program Component

During FY 1998/99, the Board spent \$24.6 million on enforcement (59 percent of its total budget); \$6.7 million on licensing (16 percent of its total budget); \$3.7 million on administration, (9 percent of its total budget); \$2.1 million on examination (5 percent of its total budget); and \$1.2 million on public affairs (3 percent of its budget). Department of Consumer Affairs ProRata was \$3.3 million (8 percent of CSLB's budget).

Table 3 – Expenditures by Program Component

Program	Expenditures (In Thousands)				Program Share (%)
	FY 95-96	FY 96-97	FY 97-98	FY 98-99	
Enforcement	22,985	23,640	24,044	24,583	59
Licensing	6,205	6,449	6,539	6,671	16
Examinations	1,941	2,015	2,055	2,082	5
Public Affairs	1,165	1,209	1,233	1,249	3
Administration*	3,494	3,628	3,698	3,747	9
Subtotal	35,790	36,941	37,569	38,332	92
DCA ProRata **	3,032	3,368	3,523	3,301	8
TOTAL	38,822	40,309	41,092	41,633	100

* Administration includes executive staff, Board, support (mail, filing, cashiering), information technology and fiscal services.

** Costs shown in subsequent tables exclude DCA ProRata.

Fund Condition

The Board maintains an analysis of the Contractors License Fund, including reserves, revenues, transfers and expenditures. As of June 30, 2000, the Board expects a reserve of about \$18.4 million. The revenue transfers in fiscal year 1998/1999 result from repayment of a loan to Cemetery and Funeral Board and repayment of a fund transfer to the General Fund in fiscal year 1991/1992, as a result of the Malibu Video lawsuit. CSLB plans major expenditures in fiscal year 2001/2002, including an 8 percent general salary increase.

Table 4 – Breakdown of Staff and Funds

Fund Category	Actual (In Thousands)				Projected (In Thousands)	
	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
Number of Staff *	450.1	440.8	447.8	464.2	466.6	466.6
Beginning Adjusted Reserve	\$16,836	\$15,355	\$ 19,754	\$10,597	\$18,167	\$18,353
Revenue						
License Fee	9,451	8,606	8,641	8,826	9,296	9,050
Renewal Fee	27,409	30,721	30,213	31,839	29,785	32,030
Renewal Refund	-	-	(10,071)	(10,613)	-	-
Delinquent Fee	373	385	439	364	406	437
Interest	549	740	658	882	945	945
Miscellaneous	79	78	64	50	45	70
Penalties	801	996	906	955	898	898
Total Revenue	38,662	41,526	30,850	32,303	41,375	43,430
Transfers **	(1,854)	2,554	1,085	16,900	975	975
Total Resources	53,644	59,435	51,689	59,800	60,517	62,758
Expenditures						
Personnel Services	21,499	21,336	21,713	21,121	22,306	22,306
Operating Expenses	13,057	14,346	14,999	16,006	15,383	15,383
TOTAL PS & OE	34,556	35,682	36,712	37,127	37,689	37,689
Statewide ProRata	892	917	480	822	822	822
DCA ProRata	3,032	3,368	3,523	3,301	3,400	3,400
Reimbursements	342	342	377	383	253	253
Total Expenditures	38,822	40,309	41,092	41,633	42,164	42,164
Ending Reserve	14,822	19,126	10,597	18,167	18,353	20,594
Months in Reserve	4.6	5.7	3.1	5.2	5.2	5.9

* The number of staff is lower than the number of authorized staff because of vacancies.

** See page 5 – Fund Condition for explanation of recent transfers

LICENSURE REQUIREMENTS

Scope of the Profession

All businesses and individuals who construct, offer to construct, or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the Board if the total cost (labor and materials) of one or more contracts on the project is \$500 or more. Contractors, including subcontractors, specialty contractors, and persons engaged in the business of home improvement, must be licensed before submitting bids.

The CSLB Licensing Division assures contractors' qualification by reviewing their work experience as part of processing new applications for licensure and additional license classifications. The Division also maintains license records, including renewals, contractor's license bonds and workers' compensation insurance policies.

Exemptions to Licensure

Under the statutes, the definition of the term "contractor" and the relevant scope of work subject to licensure are very broad. Exemptions are limited. The following situations represent nearly all of the exemptions to the CSLB licensing requirements:

- Construction-related improvements under \$500 in value for all labor and materials.
- Employees of licensees whose sole compensation is salary and wages.
- Public personnel working on public projects as employees of the public entity.
- Oil and gas operations performed by an owner or lessee.
- Owner-builders who improve their principal place of residence under conditions that are specified in the Contractors License Law.
- Sellers or installers of products which do not become a fixed part of the structure.
- Security alarm company operators and those who install satellite antenna systems. (Regulated by other agencies.)
- Architects, engineers, geologists, structural pest control operators. (Regulated by other agencies.)

Financial Solvency, Insurance and Bonding Requirements for Licensure

Applicants for licensure must certify to having more than \$2,500 in operating capital. Applicants must also provide proof of workers' compensation insurance, or sign a form that certifies that he/she is exempt from the workers' compensation insurance requirements. In addition, applicants must submit a contractor's bond or cash deposit in the amount of \$7,500. An additional \$7,500 bond is required for each Responsible Managing Employee, or Responsible Managing Officer (RMO). (If, however, the RMO owns 10 percent or more of the voting stock, the additional bond is not required.)

Education, Experience and Examination Requirements

An applicant for licensure must be at least 18 years of age. The person who is acting as the qualifier for the license must have, within the last ten years, at least four years of journey level work experience in the trade for which the license application is submitted. Technical training, completion of an approved apprenticeship program, or a construction-related college or university education can be substituted for not more than three years of the experience requirement. Unless a waiver is applicable, the qualifier must successfully complete an examination process consisting of two parts: (1) a relevant trade test, and (2) a “Law and Business” test. All candidates must complete the open book examination entitled: “*Asbestos: A Contractor’s Guide and Open Book Examination.*”²

Waiver of Exams

The Contractors License Law authorizes the Registrar to waive the exam process (both the general business law examination and the appropriate trade examination) under the conditions outlined below:

- Within the five-year period preceding application, the qualifying individual has either passed the relevant exam or has been the qualifier on another license holding the classification for which the application was submitted. (B&P Code §7065)
- For five years of the seven-year period preceding application, the qualifying individual has been associated with a license that is active and in good standing, and meets one of the following conditions: (B&P Code § 7065.1)
 - 1) The qualifying individual has been listed on the CSLB license records as an owner, partner or corporate officer, and is applying for the same trade classification(s) currently held on said license record.
 - 2) Although not listed on the personnel of record, the qualifying individual has been continuously employed in a supervisory capacity by a corporate licensee, and the corporation is applying to replace its qualifier in the same classification for which the employee has provided supervision.
 - 3) The qualifying individual is a family member who has been actively engaged in a licensee’s existing family business and licensure of said person is required in order to continue the family business.

Examinations

Examinations are administered daily at eight testing centers throughout the state by means of a computerized system, called computer assisted testing (CAT). There are currently 45 examinations being administered: 41 trade, 3 certification, and the Law and Business exam.

² The asbestos open book exam is a short booklet used to educate applicants with regard to the hazards of handling asbestos. This awareness exam differs from the Asbestos Certification exam that permits licensees to contract for asbestos abatement. The latter is a necessary prerequisite for asbestos removal.

Table 5 shows the passing rates for each examination, averaged over the last three years. The average passing rates range from 23 percent to 90 percent. The wide range is due in part to examination questions that are outdated and/or overexposed.

The Board has obtained the necessary resources to revise all of its examinations over the next five years. The revision schedule is based on the priority recommendations in the report by Cooperative Personnel Services. As the examinations are revised and new test questions are created, the passing rates are expected to fall within a narrower range.

In order to revise an examination, an occupational analysis must be performed. Information will be gathered from current licensees to determine the critical tasks and knowledge required for safe and competent job performance, in so-called content areas. The results of the occupational analyses will indicate the content areas to be covered on the examinations, and the weight to be given each content area. Following the occupational analyses, testing specialists will work with current licensees in each trade to develop new examination questions and to revise outdated questions.

Table 5 – Status of Examinations

Examination Classification	Average Number Admin*	Current Passing Score	Average Passing Rate*	Occupational Analysis Developer**	Date of Last Occupational Analysis	Date of Last Exam Revision	Date of Next Exam Revision
Law and Business	15,301	68%	73%	CSLB	1993	1994	2001
Asbestos Certification	157	62%	59%	HRA	1986	1996	2001
Hazardous Certification	248	60%	66%	HRA	1992	1993	2002
A (General Engineering)	881	68%	85%	CSLB	1998	1998	1999
B (General Building)	6,279	72%	69%	CSLB	1994	1995	2001
C-2 (Insulation & Acoustical)	57	60%	49%	HRA	1986	1992	2001
C-4 (Boiler, Hot Water)	50	62%	62%	HRA	1986	1992	2002
C-5 (Carpentry)	123	75%	23%	CPS	1999	1999	2000
C-6 (Cabinet & Mill Work)	307	67%	62%	DCA	1992	1999	***
C-7 (Low Voltage)	509	72%	53%	PSI	1990	1992	2001
C-8 (Concrete)	345	60%	77%	PSI	1986	1994	2002
C-9 (Drywall)	334	65%	32%	HRA	1985	1994	2001
C-10 (Electrical)	1207	64%	84%	PSI	1986	1993	2001
C-11 (Elevator)	39	72%	85%	CSLB	1998	1998	2000
C-12 (Earthwork & Paving)	174	61%	45%	HRA	1992	1993	2001
C-13 (Fencing)	168	63%	41%	HRA	1985	1993	2002
C-14 (Metal Roof)	14	61%	60%	HRA	1988	1999	***
C-15 (Flooring)	89	63%	40%	PSI	1986	1996	2004
C-16 (Fire Protection)	141	60%	47%	CSLB	1991	1996	2002
C-17 (Glazing)	223	63%	58%	PSI	1992	1993	2002
C-20 (Heat, Vent, AC)	756	74%	65%	PSI	1986	1994	2001
C-21 (Bldg, Moving & Demo)	80	60%	68%	PSI	1985	1986	2001
C-23 (Ornamental Metals)	68	61%	62%	HRA	1986	1993	2003
C-26 (Lathing)	13	64%	27%	HRA	1985	1999	***
C-27 (Landscaping)	1331	66%	38%	CSLB	1991	1993	2001

* Average of last three fiscal years ** CPS = Cooperative Personnel Services; DCA = Department of Consumer Affairs; HRA = Hoffmann Research Associates.; PSI = Psychological Services, Inc. *** Merged with another classification

STATUS OF EXAMINATIONS (continued)

Examination Classification	Average Number Admin*	Current Passing Score	Average Passing Rate*	Occupational Analysis Developer**	Date of Last Occupational Analysis	Date of Last Exam Revision	Date of Next Exam Revision
C-28 (Lock & Security Equip)	75	71%	34%	CSLB	1995	1996	2004
C-29 (Masonry)	309	60%	28%	CSLB	1993	1996	2002
C-32 (Parking & Highway)	65	60%	28%	CSLB	1992	1993	2003
C-33 (Painting & Decorating)	1692	70%	71%	PSI	1986	1993	2001
C-34 (Pipeline)	29	60%	26%	HRA	1986	1993	2003
C-35 (Plastering)	168	60%	42%	CPS	1999	1999	2000
C-36 (Plumbing)	774	66%	77%	PSI	1986	1986	2001
C-38 (Refrigeration)	137	72%	68%	PSI	1985	1994	2002
C-39 (Roofing)	752	70%	55%	PSI	1986	1996	2001
C-42 (Sanitation Systems)	43	62%	43%	HRS	1985	1992	2003
C-43 (Sheet Metal)	108	52%	53%	CPS	1999	1999	2000
C-45 (Electrical Signs)	67	72%	71%	CSLB	1985	1986	2002
C-46 (Solar)	10	64%	80%	PSI	1986	1988	2003
C-47 (Gen Manuf Housing)	44	62%	64%	PSI	1985	1988	2003
C-50 (Reinforcing Steel)	25	61%	43%	HRA	1986	1987	2003
C-51 (Structural Steel)	91	73%	68%	CPS	1999	1999	2000
C-53 (Swimming Pool)	126	67%	73%	PSI	1990	1996	1999
C-54 (Tile)	371	60%	75%	HRA	1985	1992	2001
C-55 (Water Conditioning)	29	72%	70%	CSLB	1986	1986	2002
C-57 (Well Drilling)	162	69%	48%	CSLB	1986	1990	2002
C-60 (Welding)	113	66%	51%	HRA	1985	1986	2003
C-61 (Limited Specialty)	978	72%	90%	CSLB	1986	1995	2002

* Average of last three fiscal years ** CPS = Cooperative Personnel Services; DCA = Department of Consumer Affairs; HRA = Hoffmann Research Association.; PSI = Psychological Services, Inc.

Time Frame for Licensing

Given a complete application, with complete and accurate documents and fees, the estimated time for obtaining a license through the examination process is 8 to 9 weeks (4 weeks in application processing; 4 to 5 weeks for examination process). Under the same circumstances, the estimated time for obtaining a license through the examination waiver process is 2.5 weeks.

Table 6 – Average Days to Receive License (Original Applications)

Applications	FY 95-96	FY 96-97	FY 97-98	FY 98-99
Examination Applications				
Application to Examination	64	60	72	76
Examination to Issuance	47	49	48	49
Total Average Days	111	109	120	125
Waiver Applications				
Received date to First Reject	N/A*	40	38	38
Last Reject or Received Date to Issuance	N/A	51	52	57
Total Average Days		91	90	95

* N/A – Not Available

The processing time for applications includes the time that it takes the applicant to provide the required information needed to complete the application or to make corrections. It also includes the amount of time the applicant takes to send in the requisite bonds, workers' compensation insurance documents, and appropriate fees.

Continuing Education/Competency Requirements

There is no requirement that contractors participate in continuing education as a condition of license renewal. However, the Board has worked on educating contractors through:

- The Board's quarterly newsletter. It includes educational articles;
- Offering contractor forums in partnership with institutions of higher education and California Building Officials (CALBO) throughout the state on issues such as home improvement contracting, contractor law, licensing issues and building codes;
- Joint ventures with professional associations to identify and publicize course work related to seismic retrofitting of buildings; and
- Requiring licensees to take continuing education as a part of a disciplinary action.

Reciprocity with Other States

Business and Professions Code § 7065.4 authorizes the Board to enter into reciprocal agreements with other states for the mutual acceptance of trade qualifications. The Board currently has reciprocal agreements with Arizona, Nevada and Utah. Under these agreements, applicants are required to pass the Business and Law exam administered by each state, but the relevant trade examination for each state will be waived, provided the applicant's contractor's license in the reciprocal state has been in good standing for the previous five years.

The CSLB is an active member of the National Association of State Contractors Licensing Agencies (NASCLA). Effective January of 1999, NASCLA's disciplinary databank went on-line, providing current information on contractors who have been disciplined by one or more of the member states.

ENFORCEMENT ACTIVITY

Enforcement Program Overview

The Contractors State License Board receives complaints from members of the public concerning all phases of the construction industry. The majority of the complaints, however, are from owners of residential construction involved in remodeling or repair work. In FY 1998/99, the CSLB received over 26,000 complaints.

Historically, the Board's complaint processing functions were handled in fifteen district offices within three regional areas. The entire process, including complaint initiation, investigation, dispute resolution and legal action, was handled separately by each district and region. A 1997 Price Waterhouse study revealed significant inconsistencies within the complaint handling process in the areas of district and staff workload, training and legal action referrals. Unevenness in staffing levels and district workloads served to drive up cycle times. Different approaches to dispute resolution, adjudication and legal actions reduced consistency in the treatment and outcomes for consumers and contractors.

Responding to the Price Waterhouse study, the CSLB has begun a reengineering project for field operations. The reengineering pilot project has been implemented in southern California (Los Angeles, Orange, Riverside and San Bernardino counties). The new program channels all incoming complaints to one location where they are evaluated for appropriate assignment. This process eliminates the problem of fluctuating workload and personnel staffing in local districts decreasing processing times. One anticipated result is shorter times to final complaint resolution.

In the pilot program, when a complaint is received in the Intake and Mediation Center (IMC), it is immediately entered into the CSLB computer database for tracking purposes. Data are available to all enforcement employees, regardless of location, and can be used to assess a licensee's record when determining initial assignment of a pending investigation. The new complaint is subject to "triage" by the IMC staff. Triage reviews the contractor's license status; previous complaints and disciplinary actions. It also examines complaints to determine the seriousness of the allegations, whether the file is ready for investigation, and if the complaint falls within CSLB's jurisdiction. If appropriate, the complaint is assigned to a Consumer Services Representative (CSR) for mediation and attempted resolution.

Complaints involving serious allegations of fraud, prior disciplinary actions or involving contractors with multiple complaints are sent directly to the field for investigation without going through the mediation process. This allows for more effective action against contractors involved in illegal activity, such as financial victimization of elderly citizens. The centralization of the intake process also allows multiple complaints against the same contractor, no matter where they originate, to be assigned to the same investigator(s) for focused regulatory action. Under the new pilot, investigators are being outfitted with necessary equipment, such as laptop computers and cellular phones, to enable them to operate from anywhere in the state, rather than being assigned to one office with arbitrary geographical boundaries.

In January 2000, the Board will review the results of the pilot program and consider full implementation of the new procedures throughout the state.

Also in response to the 1997 study, but separate from the pilot, the CSLB has also eliminated its Northern/Southern geographical regions and implemented a management structure of statewide functions. This new structure will provide consistent enforcement of contractor's license law throughout the state. We have now replaced regional and district supervisors with statewide managers for investigation, fraud, underground economy and legal actions. Statewide management results in greater consistency and higher quality.

Under the statewide management structure, the enforcement program has also formed a unit which has oversight of training, the industry expert program and personnel actions. An ongoing statewide training program for all staff has been implemented and standard training will be given to all new personnel. In addition, ongoing training programs are held for industry experts hired by the CSLB to provide project inspections and reports. All of these classes are held in conjunction with staff from the Attorney General's office to ensure that the training will result in solid investigations and effective legal actions.

The CSLB continues to give the eradication of illegal, unlicensed contractors a very high priority. Those individuals cause a disproportionate amount of damage to the public because they act without obtaining permits, often demand cash for payment and are difficult, if not impossible to trace when inevitable problems occur. As part of this enforcement activity, several geographical areas were targeted by concentrating enforcement staff on stings and sweeps. Stings and sweeps are usually done in partnership with local media. Such exposure helps educate consumers on the dangers of hiring unlicensed contractors, and encourages the unlicensed to become licensed.

We have measured unlicensed activity levels before and after the stings to assess their effectiveness. The results showed that the number of advertisements by unlicensed individuals declined significantly in the months following these actions. In fact, over the last few years the number of reactive complaints against non-licensees has declined in direct proportion to the proactive work done by the enforcement program.

Table 7 – Complaint Data

	FY 95-96	%	FY 96-97	%	FY 97-98	%	FY 98-99	%
Complaints Filed (By Source)*	30,806	100	30,967	100	31,863	100	26,076	100
Public	21,960	71	20,892	67	20,691	65	17,802	68
Trade/Professional	2,274	7	1,951	6	1,828	6	1,163	4
State/Local Agencies	127	<1	105	<1	100	<1	71	<1
Initiated by Board	6,445	21	8,019	26	9,244	29	7,040	27
Complaints Filed (By Type)**	32,856	100	32,800	100	32,582	100	27,320	100
Workmanship/Abandonment	10,921	33	10,184	31	9,873	30	9,515	35
Non-Licensee	8,661	26	9,481	29	10,471	32	8,108	30
Other (contract disputes, etc)	13,274	40	13,135	40	12,238	38	9,697	35
Closures through Mediation*** (No Investigation)	13,244	43	12,864	42	12,273	39	11,521	44
Referred to Investigation	17,759	58	17,581	57	18,212	57	14,666	56

* Complaints by source taken from files opened

** Complaints by type taken from files closed

*** Mediation and Investigation totals refer to different time periods and may total more or less than 100%.

Disciplinary Actions

In FY 1998/99, approximately 29 percent of the complaints referred to investigation resulted in a formal disciplinary action. Another 6 percent were referred to the CSLB's arbitration program.

When violations of the Business and Professions Code are substantiated, the CSLB has several options for legal action: accusations, licensee citations, nonlicensee citations, or referrals to a District Attorney for criminal prosecution. Legal actions resulted in a total of 791 revocations and 791 suspensions, including those cases where the licensee has not complied with an arbitration award. By operation of law, those licenses are suspended and, if there is no compliance within a year, revoked.

Table 8 – Investigation Activity

Investigation Activity	FY 95-96	FY 96-97	FY 97-98	FY 98-99
Investigations Opened	17,759	17,581	18,212	14,666
Disciplinary Action Taken	5513	5723	4475	4252
Accusations *	558	378	447	489
Refer to District Attorney	845	664	1034	1,083
Citations – Licensed	1935	2290	1352	990
Citations – Non-Licensed	2175	2391	1642	1,690

* The number of complaints referred to accusation; multiple complaints against the same contractor are combined into one accusation.

Arbitration Program

The CSLB offers formal arbitration to homeowners with complaints that meet certain criteria (the contractor has no prior disciplinary action, a good complaint record, and a current and active license). The Board contracts with a private arbitration firm, currently Arbitration Works International, to hear cases that fit the program. Mandatory arbitration is offered to consumers whose estimated financial injury equals \$5,000 or less. If the homeowner agrees to the arbitration, it is mandatory for the contractor to participate.

The Voluntary Arbitration Program covers consumers with an estimated financial injury of \$5,001 to \$50,000 (this cap was recently raised from a \$25,000 limit). In the Voluntary Arbitration Program, both parties must agree to arbitration. When an arbitration award is made, the contractor has a fixed amount of time to comply. If the contractor does not comply with the arbitration award, the CSLB suspends the license, which bars the contractor from undertaking any new work. After a year, by operation of law, the license is permanently revoked.

Table 9 – Other Compliance Actions

Other Compliance Actions	FY 95-96	FY 96-97	FY 97-98	FY 98-99
Other Compliance Actions	5,467	5,774	5,238	6,896
Warning Letters	2,094	2,076	2,409	4,047
Arbitration	1,117	967	962	892
Suspensions (non-compliance)	196	231	156	172
Revocations (non-compliance)	68	93	93	54

Citations

The CSLB has the authority to issue citations for violations of the Business and Professions Code. The typical citation imposes a fine for the violations and contains correction order. A correction order may require the contractor to return to the job or pay financial restitution (usually the cost of completion of the contract) to the project owner.

Citations are issued by CSLB legal action staff and are only referred to the AG if the contractor requests an appeal hearing. Once appealed, the citation is heard by an Administrative Law Judge (ALJ). The ALJ can uphold, modify or reject the citation. ALJ decisions next go to the Registrar for adoption. Under Business and Professions Code § 7090.1, the Board has the authority to suspend the contractor's license if there is noncompliance with the correction order and/or fine. After one year of suspension, if still not in compliance, the license is revoked by operation of law. If the license is revoked, other licenses with the same qualifying personnel are also revoked.

The CSLB also can issue administrative citations for unlicensed activity. This is done when there is insufficient evidence to support a criminal violation.

Table 10 - Citations

Citations	FY 95-96	FY 96-97	FY 97-98	FY 98-99
Total Licensed Citations Issued	1,362	1,443	1,226	990
Complied with	704	876	613	308
Noncompliance Actions *				
Suspensions	994	1028	917	616
Revocations	733	646	699	555
Total Nonlicensed Citations Issued	2,027	2,080	1,438	1,690
Complied with	558	603	536	341

* Noncompliance and Complied with totals do not match Citations Issued totals because they occur in separate fiscal years.

Accusations

If an investigation substantiates violations of law, the matter may be referred for accusation to the Office of the Attorney General. This referral is made if there has been a prior citation, multiple complaints or fraudulent activity. As was the case for citations, the contractor may appeal an accusation. If appealed, the matter is referred to the Office of Administrative Hearings and heard before an Administrative Law Judge who renders a Proposed Decision. This decision is reviewed by the Registrar for adoption. If adopted, the decision becomes a Final Order and enforced against the license.

The enforcement program has also implemented use of the Interim Suspension Order (ISO) for those contractors whose activities constitute an immediate threat to the health and welfare of the public. ISOs require extensive coordination between the CSLB and AG in order to meet the stringent timelines. One recent ISO involved a company in which the wife of a revoked licensee had obtained a new license so that her husband could continue his fraudulent business practices. As soon as complaints were received against the new license, enforcement staff moved to obtain an ISO and ultimately revoked the license.

As part of the Statewide Management function, the enforcement staff has been working closely with the Office of the Attorney General to provide consistent guidelines and training on all phases of the legal action process from investigation through prosecution. Guidelines are currently being developed by staff from both agencies to provide clear direction on such issues as the parameters for determining whether a case should be filed as a citation or accusation.

Table 11 – Referrals to Attorney General

Referred to AG's Office	FY 95-96	FY 96-97	FY 97-98	FY 98-99
Accusations Filed *	348	246	199	213
Withdrawn/dismissed	41	20	18	12
Stipulated Settlements	49	66	61	140
License Revocation	239	269	235	182
License Suspension	2	4	6	3

* Number is less than accusations referred because multiple complaints can be combined into one accusation.

Referrals to District Attorney

The enforcement staff works closely with the District Attorney (DA) in many counties. The majority of investigations referred to the DA involve either unlicensed activity which resulted in financial damage to a homeowner, or cases in which the contractor has ignored administrative citations and continued to operate illegally.

The Board also works with DA's to obtain civil injunctions against contractors. Those actions parallel the disciplinary actions taken against the license. In two major cases last year, a Deputy Attorney General appeared in criminal cases to successfully petition the Superior Court Judge to suspend the license, pending the outcome of the criminal cases.

Table 12 – Criminal and Civil Actions

Criminal and Civil Actions Filed	FY 95-96	FY 96-97	FY 97-98	FY 98-99
Criminal or Civil Filed	845	664	1,034	1,083
Nonlicensed	724	602	1,014	1,024
Licensed	121	62	20	59

Table 13 – Average Cost for Disciplinary Cases (In Whole Dollars)*

	FY 95-96	FY 96-97	FY 97-98	FY 98-99
Average Cost Per Case Investigated**				
Enforcement Budget	\$18,534,000	\$18,261,000	\$19,061,000	\$19,702,000
Use of Industry Expert Witness	\$1,258,000	\$1,200,000	\$1,111,000	\$1,124,000
Number of Cases Closed	32,877	32,800	32,582	27,320
Average Cost Per Case in Whole Dollars	\$602	\$593	\$619	\$762
Average Additional Cost Per Case Referred to Attorney General				
Cost of Attorney General	\$3,386,000	\$3,189,000	\$2,913,000	\$2,993,000
Office of Administrative Hearings	\$807,000	\$989,000	\$959,000	\$764,000
Number of Cases Closed	296	314	296	215
Average Cost Per AG Case in Whole Dollars	\$14,166	\$13,306	\$13,081	\$17,474
Average Cost Per Disciplinary Case (Case Investigation Cost + AG Cost)	\$14,768	\$13,899	\$13,700	\$18,237

* All costs are exclusive of ProRata

** Includes investigations referred for accusation as well as citations in which the licensee has requested an appeal hearing.

Restitution

Restitution is made to the consumer under the following circumstances:

- Mediation process: Most complaints go to mediation. It is there that the licensee and complainant may agree to finish the job, correct the poor workmanship, or pay the complainant the cost to complete or correct the job.
- Arbitration: If arbitration is ordered or agreed to, then restitution may be ordered.
- Citation: If a citation, is issued the licensee may be ordered to correct the work or pay the consumer the costs to complete or correct the job.
- Accusation: If an accusation is filed, the Administrative Law Judge's decision usually orders restitution to the consumer.
- Unlicensed contractor applies for license: If a financial injury is caused by an unlicensed person, the person's name goes into the CSLB's computer records. Any attempt by the unlicensed contractor to become licensed will require resolution of the financial injury.
- Civil judgment: If there is a construction-related civil judgment against the license, the licensee must pay the judgment or post a bond in the amount of the judgment.
- Surety bonds: If there is a violation of the license law, then a claim can be paid by the surety company.

As shown below, in FY 1998/1999, a total restitution amount of \$28,638,000 was received. The accusation and citation amounts were obtained by CSLB as the result of formal disciplinary actions. The arbitration amount represents the total of monetary awards made through the Mandatory and Voluntary Arbitration Programs as previously described. The licensing program through enforcement of Business and Professions Code § 7071.17 obtained the Civil Judgement restitution. This law allows for an automatic suspension of the license for any unpaid civil judgment against a licensee. The suspension can only be lifted if the judgment is satisfied or if a judgment bond is posted. Business and Professions Code § 7071.11 requires the surety companies to report to the CSLB if there is a bond payout.

The following tables provide restitution dollar amounts for the past four years:

Table 14 – Restitution Received by Consumer (In Thousands)

Restitution to Consumer	FY 95-96	FY 96-97	FY 97-98	FY 98-99
Accusations	165	117	388	364
Citations	373	701	585	957
Arbitration	1,490	1,656	1,665	1,844
Mediation	11,436	9,776	13,115	8,554
Civil Judgments	11,112	9,861	14,895	12,159
Surety Bonds	5,335	5,720	5,123	4,760
Total Restitution	29,911	27,831	35,771	28,638

Complaint Aging

In FY 1998/99, the median age of pending complaints increased somewhat compared to the two prior years. 84 percent of the complaints were closed within a six-month time frame. The recent reengineering of field operations and the Statewide Management structure described earlier were designed, in part, to speed case processing without sacrificing quality or increasing costs. While early data are incomplete, they suggest faster processing times.

Table 15 – Complaint Aging Data

Complaint Aging Data	FY 95-96	FY 96-97	FY 97-98	FY 98-99
Median Age of Pending Complaint Investigated Cases				
Median Age in Days	60	47	43	54
Aging of Completed Complaint Investigation Cases at CSLB				
1-90 days	61%	66%	70%	64%
91-180 days	20%	19%	18%	20%
181 days -1 Year	17%	13%	11%	15%
1 Year +	2%	2%	1%	1%
Aging of Cases Pending in Attorney General's Office				
0-180 Days	50%	50%	57%	54%
181 Days - 1 Year	27%	27%	28%	26%
1 + Years	23%	23%	15%	20%

Enforcement Satisfaction

The CSLB has been conducting a consumer satisfaction survey to monitor the effectiveness of its activities since 1993. The questionnaire used by CSLB is similar to the one the JLSRC directed all boards and committees under review to conduct. The 1998 data comes from over 2,000 responses to a survey sent to 4,816 consumers who used CSLB's services.

Table 16 – Consumer Satisfaction Survey Results

CONSUMER SATISFACTION SURVEY FOR CONTRACTORS BOARD				
Questions	Responses by Calendar Year			
	1995	1996	1997	1998
	Percent Agree Response			
1. The Board contacted me promptly after I filed my complaint.	71	74	75	77
2. Before hiring, I thoroughly checked my contractor's qualifications.	49	50	46	48
3. The procedures for investigating my complaint were clearly explained to me.	66	70	70	71
4. The Board kept me informed of my case's process during the investigation.	56	60	62	64
5. I was treated courteously by the Board's representative.	78	82	82	84
6. My case was processed in a timely manner.	56	60	61	64
7. I understand the outcome of the investigation (whether or not I agree with the action taken).	62	65	66	68
8. The action taken in my case was appropriate.	50	53	53	54
7. I am satisfied with the service provided by the Board.	56	58	61	63

Cost Recovery

Pursuant to Business and Professions Code § 125.3, the Board may request the Administrative Law Judge to direct a licensee who is found to have violated Licensing Law to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. In FY 1998/1999 the Administrative Law Judge ordered \$170,166 in cost recovery.

Complaint Disclosure Policy

The Board maintains a website (www.cslb.ca.gov) and a toll free number (800-321-CSLB) for use by the public for the purpose of obtaining general license information regarding the contractor. The licensee's status and list of past and pending legal actions against the licensee is also made available. The website also provides information on the contractor's bond and workers' compensation insurance.

"Pending legal actions" are reported only when investigative staff has substantiated a complaint, and legal action has been requested.

"Past legal actions" include citations previously issued against the licensee and any disciplinary action in which probation, suspension or revocation has occurred.

Information concerning an arbitration decision is not made available to the public unless the licensee fails to comply with the arbitration award. Failure to comply results first in suspension of the license, then, if the failure persists for one year, the automatic revocation of the license. The Board reports civil judgments against a contractor when suspension is pending or has occurred.

CONSUMER OUTREACH AND EDUCATION

Public Awareness Campaigns

Consumer outreach teaches consumers how to protect themselves against unlicensed or unreliable contractors. Outreach also seeks to inform consumers about the services available from the CSLB. In 1995, the Board launched an awareness campaign with the slogan, “Get Smart. Get a Licensed Contractor.” Public service announcements were developed and 1,200 radio and television advertisements were purchased and placed in major media markets throughout the State. The buys resulted in an immediate measurable increase in phone calls received, booklets requested and contractor license status inquiries.

In the summer of 1997, the “Get Information to Build On” campaign was conducted in Sacramento County. Research determined public awareness of CSLB services (automated license check, complaint filing, and publication orders). Public awareness about hiring contractors and the consumer protections in contractor law (e.g., limitations on down payments) was also assessed. That research led to public service announcements, billboards and print advertisements, including a 12-page newspaper insert.

Publication requests broke records during the campaign: telephone calls to the toll-free telephone system increased 16 percent in June and 11 percent in July. Calls from the 916 area code (Sacramento area) increased 14 percent in June and 17 percent in July. Complaints filed in Sacramento County increased 33 percent in July.

The 1998 public awareness campaign included public service announcements in eight of the hardest-hit flood disaster regions in California and four consumer forums in partnership with media sponsors and trade associations.

Beginning in 1999, a two-year campaign commenced using data from the census, building and construction industry, Department of Finance and CSLB to develop CSLB target audiences. (Appendix 1 – Consumer Education Target Data) The data indicate significant concentrations of vulnerable groups, such as elderly homeowners, in Southern California. The Board, therefore, commissioned large purchases of air time on Southern California radio stations. CSLB used radio because it offered the most cost-effective way to deliver the “Get Information to Build On” messages to the target audiences.

Initial results are promising. The numbers of telephone calls to check a license and the number of requests for publications were up in July 1999, compared to the numbers in July 1998. Additionally, internet license checks and publication requests were up in July 1999.

In the first three months of the current public awareness campaign, co-operative advertising (CSLB pays half; vendor pays half) was conducted with promoters of the five largest home and garden shows in California. The Board had a 50 percent increase in the number of consumers requesting publications as compared to publications requested at the same shows without advertising in July 1998.

In addition to the activities conducted through a public relations contractor, consumer outreach and education activities include a number of ongoing programs. CSLB develops and distributes consumer publications and attends Home and Garden and trade shows where the Board messages are of immediate interest to consumers. Further, the CSLB provides speakers for consumer and trade organizations, and partners with governmental agencies to reach consumers and agency constituents.

The CSLB develops and organizes community-based consumer forums throughout the state in cooperative sponsorship with local media. For example, a consumer fair was organized by CSLB and co-sponsored by Telemundo Television in February 1999. The forum was held on Olvera Street in Los Angeles where thousands of Los Angeles residents received helpful information. A similar forum is planned for Glendale in spring 2000.

PART 2.

CONTRACTORS STATE LICENSE BOARD

IDENTIFIED ISSUES AND RESPONSES

Senate Bill (SB) 2036 (Chapter 908, Statutes of 1994) requires periodic legislative review of all boards under the aegis of the Department of Consumer Affairs (DCA). In addition, SB 2036 requires each board to issue a written report to the Joint Legislative Sunset Review Committee (JLSRC) and also applies a specific sunset date to each board unless extended by subsequent legislation.

The first CSLB Sunset Review Report was a comprehensive response to the JLSRC inquiry concerning all aspects of CSLB programs. It was submitted to the JLSRC and DCA in November of 1996. After reviewing the report and receiving public testimony the JLSRC authored legislation, SB 825 (Chapter 813, Statutes of 1997), extending the Board's sunset date to January 1, 2001. In addition, SB 825 limited the subsequent review of the CSLB to certain unresolved issues identified by the JLSRC. They are:

- Legal scope of work for the General Building (B) license classification
- Whether any Specialty (C) Contractor license classifications should be consolidated, redefined or eliminated
- Home Improvement Industry: Consideration of a separate license classification for home improvement contractors and whether the Home Improvement Salesperson registration should be eliminated
- CSLB Asbestos and Hazardous Substance certification programs: Consideration of transferring the programs to other state regulatory agencies
- Recommendation for independent review of CSLB licensing exams and exam waiver criteria
- Reduction of complaint processing time
- Cooperative efforts with local building officials for reporting violations of the Contractors License Law
- Restitution for consumers who have suffered financial losses due to violations of the law by contractors
- Increased costs for the CSLB industry expert witness program
- Uncollected nonlicensee civil penalty assessments

This report presents CSLB's responses to the JLSRC concerning the above unresolved

issues. This report contains ten questions or issues raised by the Joint Legislative Sunset Review Committee. Each issue is expressly stated, followed by a background summary and subsequent report of the Board's action to address the issue.

Issues I & II: The Joint Legislative Sunset Review Committee (JLSRC) addressed the following two issues separately in their final recommendations. However, the two issues are presented together in this report because both involve the license classification system and both were handled within the same CSLB review process.

ISSUE I

Should a General Building (B) contractor be limited to taking contracts when the job involves three or more unrelated specialty trades?

ISSUE II

Which Specialty contractor license classifications should be consolidated, redefined or eliminated?

CSLB RESPONSE

BACKGROUND

The construction industry has always involved certain specialty trades that are unique, but integral components of the building industry. The Contractors State License Board (CSLB) licenses Specialty (C) contractors in more than 39 different classifications, as well as General Building (B) contractors and General Engineering (A) contractors.

From the inception of the CSLB in 1929, until a 1996 California Court of Appeals decision, *Home Depot U.S.A. v. Contractors State License Board*, General Building (B) contractors could not contract for construction services unless three or more unrelated building trades or crafts were involved (except framing or carpentry). For example, a B contractor could not take a contract to do plumbing or electrical work exclusively.

Essentially, the Home Depot decision invalidated the Contractors State License Board regulation related to the General Building (B) license classification, and raised concerns about the health, safety and welfare of consumers. The decision made it legal for a B contractor to take a contract when the job involved a single specialty trade such as plumbing.

Assembly Bill 1455 (1995/96 session) was a response to the Home Depot decision. It contained language, drafted without CSLB collaboration, intended to overturn the effect of the Home Depot decision.

The Governor vetoed AB 1455, requesting that the CSLB submit a proposal, which would include: “. . . only specialty classes which have consumer protection needs.” The JLSRC also commented on specialty license classifications in its report, stating: “The Committee is not supportive of

specialty license classifications absent compelling findings that classification protects consumers.” Accordingly, the JLSRC directed the Board to report its findings and recommendations by October 1, 1998.

The Specialty License classification review process undertaken by the Board involved public hearings, an industry survey, CSLB data analysis, and a Specialty Classification study. Each of these processes focused on whether any license classifications should be modified.

First, the Board appointed a task force comprising the public, the industry and Board Members. The task force thoroughly examined the entire classification system - General Engineering (A), General Building (B) and Specialty (C) contractors. Discussions at a series of public hearings centered on the concepts of redefining, eliminating or consolidating the various license classifications and the impact any such actions would have on the health, safety and general welfare of the public.

Second, the task force surveyed members of 27 construction industry associations and eight city or county building departments, including Los Angeles and San Joaquin Counties. (Appendix 2 – Classification Taskforce Survey) The task force found wide concern at the prospect of deregulating the Specialty license classes. The participants cited a variety of potential health and safety risks to consumers and workers if the demonstrated competency standards for the Specialty trades were nonexistent.

Third, the task force reviewed the CSLB’s enforcement complaint data (Appendix 3 – Classification Taskforce Enforcement Complaint Data), and gave particular consideration to the potential financial risks to consumers, especially those who contract for home improvement work (remodeling and repairs).

Last, the task force commenced a study of specialty license classifications to decide whether some classifications should be consolidated. To assure that licensees who conduct business in a specific trade have the knowledge, skills and abilities necessary to provide quality services, the task force relied heavily on similarities of the Specialty license classifications. (Appendix 4 – Classification Taskforce Redefinition Model)

The task force developed recommendations based on the health, safety and welfare of the public, and referred them to the Board for consideration and action.

BOARD ACTION

The CSLB took separate actions on the General Building (B) contractor issue and the Specialty (C) contractor issue.

GENERAL BUILDING (B) LICENSE CLASSIFICATION:

Changes to the General Building (B) classification flowed from a cooperative effort among CSLB, the Senate Business & Professions Committee, industry representatives, and the Administration. Through the provisions of SB 857 (Statutes of 1997, Chapter 812), Business & Professions Code § 7057 now specifies, in summary, that a General Building (B) Contractor may legally undertake:

- A prime contract or subcontract that involves framing or carpentry;
- A prime contract or subcontract that involves at least two unrelated trades or crafts

other than framing or carpentry (framing or carpentry cannot be counted as one of the two unrelated trades or crafts);

- A contract for a single Specialty trade (plumbing, electrical, sheet metal, etc.) provided the work of the contract is subcontracted to a properly licensed Specialty contractor; or
- A contract for the work of any Specialty license classification for which they hold a Specialty license classification.

The redefined scope of work for the General Building (B) classification provided under SB 857 increases the business opportunities for B contractors and assures that specialty work will be performed by a General Building contractor or Specialty contractor who has demonstrated the requisite knowledge and expertise.

SPECIALTY CONTRACTOR (C) LICENSE CLASSIFICATIONS:

The Board reviewed and modified seven (17.5 percent) of the Specialty contractor (C) license categories. Using its regulatory authority, the CSLB made these modifications (Appendix 5 – Regulatory Definitions of Modified Specialty Classifications):

- Metal Roofing (C-14) was subsumed into Roofing (C-39) and Sheet Metal (C-43.)
(There are 255 active licensees who hold the C-14 classification. Five of them hold a C-14 only, and 213 of them also hold a C-39 or C-43)
- Cabinetry and Mill Work (C-6) was subsumed into the Carpentry (C-5) class. *(There are 3,929 active licensees who hold the C-5 classification.)*
- Lathing (C-26) was subsumed into the Plastering (C-35) class. *(297 active licensees hold the C-26 classification. 2,034 active licensees hold the C-35 classification)*

Additionally, the Board decided it is not in the best interest of consumers to eliminate any Specialty license classifications, considering the results of the health and safety survey (Appendix 1 – Classification Taskforce Survey), public testimony, and potential financial risks to consumers.

CSLB's review of the licensing system resulted in the Board moving to restructure about 25 percent of its classifications, certifications and registration program. The regulation process for each of the Specialty license modifications is complete. On June 29, 1998, the Board sent a letter to the Governor outlining the final results of the Board's review of the its licensing classification and certification system. (Appendix 6 – Letter to Governor Wilson)

ISSUE III

Should there be a separate license classification for home improvement contractors, and should registration of home improvement salespersons be eliminated?

CSLB RESPONSE

BACKGROUND: HOME IMPROVEMENT CERTIFICATION

The JLSRC's initial sunset review questionnaire asked about home improvement contractors. In response, the board gathered data showing that the majority of financial

injury and consumer complaints filed with the CSLB are attributable to home improvement construction projects. Home improvement projects include repairing, remodeling, altering, converting, modernizing or adding to a residential property. For example, home improvement could include work on a residential driveway, swimming pool, fence, porch, kitchen, or bathroom.

CSLB appointed a task force, including industry, Board members and public representatives to review the possibility of establishing a classification or certification for contractors who perform home improvement work. The task force determined that although the prime contractor (often a B contractor) is held responsible for consumer complaints under the law, the reason for the complaint could be due to the work performed by a subcontractor (roofing, plumbing, painting, etc.) hired by the prime contractor. Further, the task force concluded that it is common for a Specialty contractor to be the prime contractor on home improvement projects.

BOARD ACTION: HOME IMPROVEMENT CERTIFICATION

The Board adopted a proposal to require certification of all prime contractors and subcontractors who perform home improvement work. The Home Improvement Certification plan originally submitted to the legislature would have required home improvement contractors to:

- Pass an open book exam dealing with selected topics on the home improvement business, AND
- Fulfill a continuing education requirement, OR
- Post a blanket payment and performance bond in the amount of \$250,000.

However, certain components of the Home Improvement Certification plan met with opposition. The final version contains only the open book exam requirement, effective July 1, 2000 (Statutes of 1997, Chapter 888). The new certification examination and study guide have been mailed to all licensees. Contractors can also take the examination on the Internet, which is scored in real time. It is anticipated that approximately 200,000 contractors will become certified by July 1, 2000. (Appendix 7 – Home Improvement Certification Reference Booklet)

BACKGROUND: ELIMINATION OF HOME IMPROVEMENT SALESPERSON REGISTRATION

Under specified conditions of the Contractors License Law, the sale of home improvement goods and services by Home Improvement Salespersons (HIS) is illegal unless such individuals have registered with the CSLB.

The JLSRC's initial sunset review questionnaire asked about elimination of registration of home improvement salespersons. In response, the Board showed evidence that very few legal actions are pursued against home improvement salespersons even though CSLB has the authority to discipline them. This is because the law and CSLB hold the contractor responsible for the actions of the HIS who sells the job. Even without registration CSLB would maintain authority to enforce against individuals who violate the law.

CSLB sponsored AB 771(Margett) in the 1995/96 session to repeal the HIS registration as needless regulation. However, the HIS repeal language was dropped due to opposition from a number of consumer groups. There was concern that protections enacted in 1994 would be nullified by the repeal of the HIS registration requirement. Specifically, the 1994 legislation amended section 7153 of the Business & Professions Code to preclude a contractor from taking a security interest under a home improvement contract unless the salesperson is duly registered by the CSLB.

**BOARD ACTION: POSTPONE REPEAL OF HOME IMPROVEMENT SALESPERSON
REGISTRATION**

The Board recommends that the pursuit of legislation to repeal the HIS registration requirement be postponed while the issues related to security interests and home improvement contracts undergo legislative review.

ISSUE IV

Should the Board continue to certify and regulate asbestos contractors or those involved in the removal or remedial action of hazardous substances?

CSLB RESPONSE

BACKGROUND: CERTIFICATION & REGULATION OF ASBESTOS CONTRACTORS

The JLSRC's initial sunset review questionnaire asked about certification and regulation of asbestos contractors. In response, CSLB noted that it does not have the expertise to determine whether a contractor has violated laws pertaining to asbestos. While CSLB has the authority to discipline contractors who violate such laws, it must rely on the investigations and testimony of Department of Occupational Safety and Health (DOSH) experts or officials from a local health agency. Currently, asbestos contractors must complete applications with both CSLB and DOSH before undertaking asbestos-related work.

BOARD ACTION: CERTIFICATION & REGULATION OF ASBESTOS CONTRACTORS

The Board recommends that the responsibility for the asbestos certification program be transferred to DOSH, and forwarded proposed language to DOSH. DOSH raised a number of issues that legislation must address before transferring the asbestos certification. CSLB will continue to work with DOSH to resolve their concerns in order to transfer the program, eliminate the requirement that applicants apply to both agencies and allow asbestos contractors to enjoy "one-stop shopping." CSLB intends to continue to issue disciplinary actions against contractors who violate asbestos laws, pursuant to investigations and findings of fact by DOSH.

BACKGROUND: CERTIFICATION & REGULATION OF HAZARDOUS SUBSTANCES REMOVAL

Legislation enacted in 1986 (Statutes of 1986, Chapter 1443) gave CSLB responsibility for issuing a certification exam to contractors who engage in the removal or remedial action of specified hazardous substances (HAZ-MAT). In addition, CSLB has the authority to discipline contractors who perform this work without holding HAZ-MAT Certification.

The JLSRC's initial sunset review questionnaire asked about HAZ-MAT certification. In response, CSLB noted that it has the authority to discipline, but does not have the expertise to determine whether a contractor has followed proper procedures in the removal or remedial action of HAZ-MAT substances.

Initially, the Board recommended that the responsibility for the HAZ-MAT Certification be transferred to the Department of Toxic Substances Control (DTSC) because the agency has the necessary expertise to regulate the program. However, DTSC opposed the recommendation because the agency has no investigative staff, no mechanism to process applications, and no method to test for the HAZ-MAT Certification. Currently, the DTSC holds property owners responsible for proper disposal procedures. Typically, the property owners hire registered engineers to develop disposal plans and oversee the disposal work. In cases of improper disposal of the hazardous materials in question, the DTSC notifies the owner that additional work is needed. The DTSC performs no other

enforcement action. It appears that the public interest would not be served by transferring the HAZ-MAT Certification Program at this time.

BOARD ACTION: CERTIFICATION & REGULATION OF HAZARDOUS SUBSTANCES REMOVAL

The Board recommends it continue to administer the program as noted in the CSLB Registrar's June 16, 1998, letter to DTSC (Appendix 8 – Letter to Department of Toxic Substances Control).

Issue V

Should an independent analysis be conducted on the examinations required by the Board to obtain a contractor's license, and to determine when a waiver of the examination requirement may be appropriate?

CSLB RESPONSE

BACKGROUND

Based on the statistical data provided by the CSLB in the initial sunset review, the JLSRC stated that the pass rates for some of the licensing exams are too high and raised concerns about the waiver of the exam. The Committee recommended: 1) that the exams be analyzed by an independent expert to assure their validity; and 2) to study the exam waiver process and report back to the JLSRC on whether it is appropriate to waive exams.

BOARD ACTION

The Board agreed with the JLSRC's recommendation that an independent analysis of the Board's examinations and examination waivers be performed. Cooperative Personnel Services (CPS) has completed the analysis of CSLB's examinations (Appendix 9 – CPS Licensing Examination Program Analysis). CPS is still analyzing the Board's exam waiver program. The CSLB expects the analysis to be complete before the end of the year.

BOARD ACTION: ANALYSIS OF CSLB’S EXAMINATIONS

The CPS auditor concluded that CSLB’s examinations consistently meet or exceed professional standards for test development. The auditor observed that due to limited resources, the Board had not been able to update the occupational analyses for many of its licensing examinations. In addition, the Board had not been able to replace overexposed test questions in the more frequently administered licensing examinations.

To address the issues raised in the audit report, the legislature authorized the necessary funding for the additional testing specialists. The Board has set a schedule for conducting occupational analyses and updating examinations for each classification over the next five years. The Board will maintain a schedule whereby a new occupational analysis for each classification will be conducted every five years, subject to continuing availability of resources.

To minimize overexposure of test questions, the Board will utilize additional testing personnel to conduct periodic test question development workshops with subject matter experts. Maintaining an ongoing examination development schedule will enable the Board to increase the size of its question pools, and to ensure that examinations remain consistent with current practice in between occupational analyses.

ISSUE VI

Should the Board shorten the time frame for processing complaints and the completion of investigations?

CSLB RESPONSE

BACKGROUND

The JLSRC stated in its final recommendations that “About 60 percent of complainants surveyed . . . believe that their cases were processed in a timely fashion. . . [However] a number of investigations take from one to two years to complete before any legal action is taken.” In response, the Board outlined some of the causes for delay in the complaint process. It was particularly noted that the rash of natural disasters between 1994 and 1996 had resulted in processing delays due to the increased number of complaints and their complexity. Regardless, the Committee directed the Board to provide recommendations on reducing complaint processing and investigation time.

BOARD ACTION

A prominent goal of the Board’s strategic plan is the fast and effective resolution of consumer and contractor disputes. The Board is pursuing this goal by:

- Re-engineering dispute resolution, since January 1999, the Board has been piloting a re-engineered dispute resolution process to reduce cycle times, increase consumer and contractor satisfaction, and reduce the cost per complaint.³ The new process involves centralizing the initial processing (intake) and mediation procedures that were previously

³ The re-engineering pilot is limited to four Southern California Counties – Los Angeles, Orange County, Riverside and San Bernardino. The Board will review the results of the pilot at its January 2000 meeting with an eye toward statewide implementation.

performed in decentralized district offices. Prior to this districts had inconsistent workloads because of the mobile nature of construction. By consolidating resources, construction complaints will be addressed more quickly and consistently because shifting workload can be managed more efficiently.

- Redefining Performance measures related to dispute resolution and establishing baselines and performance targets.

BOARD ACTION

Another important goal of the Board's Strategic Plan is the fast and effective prosecution of Contractors License Law violations.

- Since March 1999, the Board has been piloting a re-engineered investigation process that relies upon a decentralized mobile investigative staff that is not hindered by dispute resolution workload or geographic boundaries. Through centralized initial processing, cases requiring investigation of Contractors License Law violations are getting to investigators sooner and are being assigned to the most appropriate resources. Better, faster and more efficient investigations that result in more effective responses to violations are anticipated.
- Performance measures related to investigation have been refined, baselines established and performance targets set.⁴
- By eliminating time spent by investigators on dispute resolution and focusing these resources on investigation of unscrupulous contractors, the Board anticipates and expects improved results in the form of increased legal actions.

⁴ The Board has designed its measures in such a way that its organizational units are encouraged to work cooperatively to achieve high level strategic goals.

ISSUE VII

Should there be more of a cooperative effort between the Board and local building officials to improve reporting of violations of the Contractor's Act?

CSLB RESPONSE

BACKGROUND

The JLSRC's initial sunset review report noted that CSLB receives very few complaints from state or local agencies. The JLSRC commented that: "In many instances however, building officials are not aware of laws pertaining to contractors. . ." The Committee suggested that the Board establish a "contact program" with building officials.

The Board responded that it has long-standing ties with building officials. Since 1994, the law has required that Board composition include one active building official. In addition, CSLB and the California Building Officials (CALBO) have had a liaison committee for a number of years. Importantly, it was noted that CSLB frequently cooperates with building officials to discipline licensees for violating building codes.

BOARD ACTION

The Board agrees that CSLB and building officials should cooperate to enforce the license law and building codes, and increase communication with CALBO. In November 1998, the Board held a roundtable meeting with CALBO leadership in Riverside to discuss better communications and how the Board could better serve Building Officials. The meeting resulted in CSLB putting together a pamphlet of frequently asked questions for Building Officials that is available as a pamphlet on our website. (Appendix 10 – Frequently Asked Questions) The roundtable discussion also resulted in a cooperative effort between the Board and CALBO to jointly sponsor legislation that will make it easier for building officials to verify contractors' workers' compensation insurance.

The Board has actively worked with the management of both CALBO and International Conference of Building Officials, as well as with local building departments, in order to provide better building code enforcement. CSLB enforcement staff in various geographical locations throughout the state has been attending the local building official meetings on a quarterly basis to maintain this liaison work.

This increased cooperation is also listed as an objective in the Board's 1999/2000 Strategic Plan. To meet this objective, roundtable discussions have been held in various locations throughout the state, in conjunction with other Board meetings, to identify ways in which CSLB and CALBO members can cooperate to provide better enforcement of building codes. In addition, letters were sent by CSLB enforcement supervisors throughout the state to their local building departments detailing areas of mutual assistance, such as direct telephone numbers to contact CSLB staff, waiving of fees for documents and witness appearances by both agencies, attending the other agency's staff meetings when requested and providing assistance with contractors who ignore local requirements. The enforcement staff as well as CSLB as a whole will continue to build on this relationship in order to provide more effective regulation of contractors who do not comply with local codes.

ISSUE VIII

Should the state consider other alternatives to providing restitution to the consumer, such as requiring performance bonds, or establishing an insurance or recovery fund?

CSLB RESPONSE

BACKGROUND

The JLSRC noted that too frequently consumers are unable to recover the amount of money necessary to rectify problems when contractors abandon a project or perform work poorly. The Committee pointed out that 15 states administer various recovery funds for the benefit of consumers and recommended that the Board consider making other methods of restitution available to consumers in California.

During the Board's public hearings about the home improvement industry, the discussion before the Board particularly emphasized consumer restitution as well as other alternatives such as mandating payment and performance bonds and/or increasing the penal sum of the contractor's license bond. Throughout the discussions, industry participants expressed concern that these restitution methods would significantly increase the cost of doing business as well as consumer costs, and create a barrier to entry for new license applicants. Despite these concerns, the Board continued to work on these issues.

Methods of Ordering Restitution

As presently structured, the CSLB has only limited methods of providing restitution to consumers who are financially injured by licensed contractors. When CSLB is successful in proving a violation of Contractors' License Law and has demonstrated that the violation led to a particular financial injury, the Registrar may order restitution for the consumer. If the contractor fails to pay the ordered restitution, the Registrar can take action against the contractor's license, suspending it until payment is made and revoking it, if there is no payment after one year.

The same process can be used when a consumer sues the contractor and is awarded a judgement in civil court or when the consumer prevails in an arbitration proceeding. If the contractor fails to pay, the Registrar can take action against the license.

These methods of restitution rely on pressure against the license. They are of limited utility if the contractor leaves the profession, goes to work for someone else, or files for bankruptcy. Manifestly, the Board's leverage for restitution is limited.

Bonds

One way of compensating for financial injury uses the license bonds. Today each licensed contractor is required to carry a \$7,500 surety bond (\$10,000 for pool contractors). The limitations of this bond are well documented:

- The bond pays out only upon a demonstrated violation of contractor's license law;

- A contractor in trouble with one consumer is often in trouble with others. Multiple claimants against the same bond reduce the amount available to each consumer. When the bond is exhausted no compensation is forthcoming; and
- The bond only covers work itself, not secondary damage caused as a consequence of a contractor's poor workmanship or by negligence on the work site.

Over the years, CSLB has examined ways to increase bond coverage for consumers. The Board originally proposed requiring payment and performance bonds in the home improvement market in the legislation creating the Home Improvement Certification. As a result of legislative opposition, this proposal was not enacted.

Commercial General Liability Insurance

The JLSRC specifically asked about the viability of insurance as part of CSLB's consumer protection strategy. In January of 1999, the Board began to examine the value of licensed contractors carrying Commercial General Liability insurance (CGL). Our first workshop, held in March 1999, demonstrated that CGL would close a gap in CSLB's consumer protection strategies by providing insurance coverage for consequential damages. CSLB held a second workshop to explore the cost and availability of CGL. Surprisingly, representatives of a number of insurance companies opposed mandating CGL. These insurance representatives were concerned that mandating CGL would require the industry to create an uninsured contractors' pool.

As an alternative to mandating insurance, CSLB is exploring the feasibility of mandating disclosure of each contractor's CGL status. Under this proposal, the CSLB would monitor and disclose to the public whether the contractor carries a minimum CGL policy. This alternative is being evaluated to determine if it would provide reasonable consumer protection without creating a barrier to licensing. Concern has also surfaced about disclosure. Some fear the mere act of disclosure would draw more suits and drive up costs.

Recovery Funds

CSLB continues to examine the approaches other states have taken to address financial injury to consumers. A number of states have adopted recovery funds. Some of these funds are very specific. For example, Indiana's recovery fund covers only the work of plumbers, while New Jersey's plan covers only new homes. Some are for the benefit of homeowners only and other funds are available to unpaid subcontractors and material suppliers as a substitute for lien rights. Most of the recovery funds are funds of last resort, requiring legal work after the consumer obtained a judgement. Moreover, the Hawaii, Massachusetts, Florida and Utah lien recovery funds stated that the process of recovering from the fund was burdensome, complicated and could have significant attorney costs. The poor and uneducated have a difficult time collecting from the fund. Most recovery funds are from fees that bear no relationship to the business volume or risk of a given contractor. The fees to support the fund come from reputable contractors. No fund has a successful method of recovering from the contractor after a payout. To replenish recovery funds, states relied on after-the-fact strategies ranging from reassessing fees to waiting for next year's assessments.

This year, Assemblyman Honda introduced Assembly Bill 742 to create a lien recovery fund administered by CSLB. Legislative Counsel draft language for the Honda bill would create a fund available to laborers, subcontractors and material suppliers who had acquired lien rights on California homes even though the homeowner paid the prime contractor in full. Under the legislative counsel draft, each California contractor certified for home improvement work would pay \$200 a year. CSLB anticipates that this would result in a fund of about \$50 million a year. Since many lien disputes are settled without CSLB involvement, CSLB has no perspective on whether this amount would be enough or too much. CSLB has initiated a review of our licensee pool to determine how often (and for how much) lien disputes result in a homeowner paying twice for home improvement work.

BOARD ACTION

The Board has directed the Registrar and staff to work with industry and other interested parties for the purpose of developing a workable solution to the problem of financial injury to consumers. CSLB is working with interested parties to better protect consumers by creating a Home Improvement Protection Plan (HIPP) for the year 2000. Below are the key elements:

- New Bond: CSLB is working with a group of California sureties to create a new bond that would supplement the present \$7,500 bond. The new \$7,500 bond would be carried by home improvement contractors and would be available only to homeowners, thereby doubling bond protection for homeowners.
- New Civil Penalty: CSLB is proposing a new civil action to allow material suppliers to seek the same 2 percent per month penalty from contractors as presently available for subcontractors under the Business & Professions Code section 7108.5. The theory being that if an interest payment is available to material suppliers, the suppliers will be more likely to file suit against the contractor rather than assert lien rights against a homeowner.
- New Disclosure Requirement (Insurance): As discussed above, consequential damage is not generally covered under CSLB law. This proposal would allow the Board to disclose whether or not the contractor carries general liability insurance and would underscore the value of insurance to the consumer.
- New Notices: Effective consumer protection almost always relies on getting information to the consumer in a way that he or she can understand. CSLB is working on a series of proposals to make our notice requirements more useful to consumers.
- Revision of CSLB's Criminal Conviction Review Process: CSLB is developing a comprehensive approach to reviewing our applicants and licensees criminal history. This review is particularly necessary given the introduction of the Home Improvement Certification program. CSLB is concerned that the certification may appear to constitute an approval of the individual's suitability for home improvement work. The new review process will include a fingerprint provision.

ISSUE IX

It is unclear why the expenditure for use of industry expert witnesses to investigate the majority of licensee complaints has increased substantially, and whether this component of the enforcement program has helped the Board effectively use enforcement resources.

CSLB RESPONSE

BACKGROUND

The JLSRC noted from the initial sunset review report a sizable increase in the expenditures for the Industry Expert program. Specifically, between fiscal year 1992/93 and fiscal year 1995/96, expenditures grew from \$550,000 to \$1.3 million. The issue was eventually referred to the Senate Budget Committee, which accepted the CSLB's explanation that the increases were largely attributable to the number and complexity of the cases resulting from natural disasters.

In addition, CSLB clearly stated that the Industry Expert program is essential to the enforcement program in order to establish workmanship violations, as well as determine the current and justifiable costs for corrective work.

Industry Expert (Millions)	FY 95/96	FY 96/97	FY 97/98	FY 98/99
Total Costs	\$1.3	\$1.2	\$1.1	\$1.1

BOARD ACTION

For a variety of factors - many well publicized - the dollar costs of home remodeling contracts have increased exponentially. We now see complaints where the remodeling costs exceed the prices for many new homes of 5-10 years ago. Accordingly, the Board's use of industry experts is more valuable than ever. Presently, the Board contracts with an expert to assist the investigator approximately 4,000 times annually. We cannot envision another resource that would be as credible and cost-effective.

As complaints to the Board became more sophisticated, the Board's reliance on the industry experts has increased. To assure the public that industry expert are necessary, the Board has implemented stricter cost controls on the Industry Expert program and new procedures, effective May 1997. Industry expert charges exceeding \$300 must be submitted with a justification for the charges and be approved. Approval depends on: (1) the number of complaint items, (2) the complexity of the evaluation, (3) the specialty involved, (4) the type of testing involved, (5) the required distance of travel, and (6) the urgency of the case for which the inspection is required. Under long-standing CSLB procedure, no industry expert charges exceeding \$500 will be approved without justification and approval prior to the inspection services.

The stricter cost controls have stabilized the expenditures for the program. However, as the enforcement program develops its present efforts to maximum potential, costs for this program should increase. For instance, the Board has increased its efforts to investigate

and prosecute contractors for illegal actions by obtaining forensic auditors to provide expert reports and analysis in complex cases involving financial diversion. The role of the Industry Expert as an adjunct to the investigator remains indispensable to the effective enforcement of workmanship issues, code violations and financial fraud.

It should be noted that the cost for experts not only covers the initial industry expert job inspection and report, but it also covers the cost of any re-inspection if the contractor corrects and/or completes the job, as well as testimony in disciplinary hearings.

Issue X

Should the Franchise Tax Board (FTB) be granted legislative authority to collect fines that have been assessed against unlicensed contractors?

CSLB RESPONSE

BACKGROUND

The JLSRC noted during the sunset review process that CSLB only collected approximately 10 percent of the penalties assessed for license law violations. At the time of reporting, the unpaid assessments totaled more than \$2 million for licensees and more than \$6 million for nonlicensees. The Committee directed the CSLB to explain the inability to collect the civil penalties and to provide the JLSRC with a recommendation for improving collections. Ultimately, the issue was limited to the collection of the nonlicensee penalties.

A large number of nonlicensees who owe penalties do not have attachable assets and cannot be identified by the techniques available to collection agents. The CSLB is currently under contract with two collection agencies. One agency handles collections for penalties for the North, and the other

handles the penalties issued in the South. The collection agency fees range from 5 percent (30 days to collect) to 30 percent (90 days to collect). If a civil judgment is obtained to enforce collection, the agency fees increase to 50 percent and 35 percent respectively.

A brief overview of the collection agency data for calendar year 1997 reveals that \$1.5 million in nonlicensee penalty referrals resulted in an average collection rate of approximately 13 percent. According to collection agency staff, most of the successful collections are accomplished within six to nine months of referral. However, the fact that debts are reported to credit reporting agencies has resulted in some payments being made several years after referral.

The concept of using FTB to collect delinquent penalties was first examined by the Board when AB 255, introduced in 1995, sought the authorization for FTB to collect outstanding debts for all state agencies under specified conditions. The amended 1996 bill (Statutes of 1996, Chapter 1001) limited its scope to FTB collections for the Student Aid Commission.

In recent years FTB has been authorized to collect debts for an expanded number of state and local government agencies. They collect fines and penalties for the Department of Labor Standards Enforcement, delinquent motor vehicle registration fees for the Department of Motor Vehicles and delinquent accounts for the Student Aid Commission (Appendix 11- FTB Collection Program Overview). In the original legislation, CSLB was included in the list of agencies that FTB was authorized to collect debts for, but the final version amended CSLB out of the bill.

BOARD ACTION

The Board directed staff to work with FTB on developing a feasibility study (Appendix 12 – FTB Feasibility Study) to find out whether or not FTB should begin collections for CSLB. For the CSLB feasibility study, the records of approximately 10,000 nonlicensee penalty assessments totaling \$11 million were sent to FTB to ascertain how many of them could be collected under the FTB system. These assessments represent all of the uncollected nonlicensee citations, including those that were referred to private collection agencies but for which there has been no collection activity.

The initial results of the FTB study are summarized as follows:

Prior Assessments, January 1, 1999 - December 1, 1999:

Initial collectable amount: \$1 million (1,951 penalty assessments)

FTB costs to collect, first year: \$225,000

Ongoing Assessments, January 1, 2000 - December 31, 2002:

Assumed amount annually: \$2.5 million

Projected return rate: 16 percent (approx.)

Projected costs to collect: 50 percent (approx.)

CONCLUSION

Considering the FTB estimated rate of collection at 16 percent, there is only a 3 percent difference between the FTB and private collection agency rates. Given the comparative analysis, including the FTB projected costs, there does not appear to be a compelling financial incentive to pursue legislation at this time.

However, it is notable that the legislation expanding FTB authority to include collection of penalties also included the authority to utilize all of the powers of the FTB in the collection of such debts. This authority, in and of itself, may represent a considerable deterrent to those individuals who may otherwise risk the penalties of unlicensed activity. Since the make-up of the Board is currently in flux, there has been no policy dialogue relative to this point.

PART 3.

BACKGROUND PAPER FOR HEARING

CONTRACTORS STATE LICENSE BOARD (CSLB)

IDENTIFIED ISSUES, BACKGROUND CONCERNING ISSUES, STAFF RECOMMENDATIONS, AND QUESTIONS FOR THE BOARD

PRIOR SUNSET REVIEW: The Contractors State License Board (CSLB) was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) three (3) years ago (1996-97). In early 1997, both the JLSRC and Department of Consumer Affairs (DCA) released reports indicating they were not entirely satisfied with CSLB's response to several of the issues and problems identified by the Committee, its staff, and the public. Although both the Committee and DCA concurred that contractors should continue to be regulated, and that CSLB is the appropriate entity to engage in that regulation, both branches expressed the concern that "state regulation and licensing of certain contractors may not be needed in all areas currently subject to the Board's jurisdiction if it can be determined, for example, that there is no consumer risk involved." The JLSRC noted that CSLB had appointed a Classification Review and Regulation Reduction Task Force to review the Board's 42 specialty classifications to determine whether some could be eliminated, consolidated, or refined. The JLSRC also noted that, at that time, the Board had not yet come up with an acceptable way to address an appellate court decision invalidating CSLB's regulatory definition of the B-general building contractor category (see below). In addition, the Joint Committee instructed CSLB to hold public hearings on the possibility of creating a certification program for home improvement contractors, to contract with an independent exam expert to analyze the Board's licensing exams, find ways to shorten the time frame for processing complaints and completing investigations, explore ways to provide restitution to consumers when they have been injured by contractors (*e.g.*, a performance bond requirement or the establishment of an insurance or recovery fund), and address other issues identified during CSLB's sunset review.

Because there were still major unresolved issues involving the regulatory powers of this Board, the JLSRC recommended, and both DCA and the full legislature agreed, to extend CSLB's existence for only two more years (whereas most other boards were extended for four years). The legislature passed SB 825 (Greene) (Chapter 813, Statutes of 1997), which extended CSLB's sunset date to July 1, 2000 and instructed the Board to address the unresolved problems as identified by the JLSRC prior to the next sunset review hearing. SB 1306 (Figueroa) (Chapter 656, Statutes of 1999) extended the sunset date of CSLB for one more year, so that it could be reviewed in 1999. The following are unresolved issues pertaining to the CSLB, or areas of

concern for the JLSRC, along with background information concerning the particular issue. Where necessary, the staff of the JLSRC has made preliminary recommendations for members and DCA to consider. There are also questions that staff has prepared concerning the particular issue. The CSLB was provided with these questions and should address each one.

CURRENT SUNSET REVIEW ISSUES:

ISSUE #1. THE ISSUE PERTAINING TO THE LICENSING OF B-GENERAL CONTRACTORS HAS BEEN RESOLVED. HOWEVER, IT DOES NOT APPEAR THAT THE BOARD HAS ADEQUATELY ADDRESSED WHICH “SPECIALTY CLASSIFICATIONS” COULD BE ELIMINATED. IT IS UNCLEAR WHETHER THERE WOULD BE ANY BENEFIT TO THE CONSUMER IN IDENTIFYING SUBSPECIALTIES OF EXISTING CONTRACTOR CLASSIFICATIONS AND PROVIDING A “MERIT BADGE” TO THESE CONTRACTORS.

BACKGROUND: The CSLB licenses Specialty (C) contractors in more than 42 different classifications, as well as General Building (B) contractors and General Engineering (A) contractors.

From the inception of the CSLB in 1929, until a 1996 California Court of Appeals decision, *Home Depot U.S.A. v. Contractors State License Board*, General Building (B) contractors could not contract for construction services unless three or more unrelated building trades or crafts were involved (except framing or carpentry). For example, a B-contractor could not take a contract to do plumbing or electrical work exclusively.

Essentially, the *Home Depot* decision invalidated the Contractors State License Board regulation related to the General Building (B) license classification, and raised concerns about the health, safety and welfare of consumers. The decision made it legal for a B-contractor to take a contract when the job involved a single specialty trade such as plumbing.

Assembly Bill 1455 (1995/96 session) was a response to the *Home Depot* decision. It contained language, drafted without CSLB collaboration, intended to overturn the effect of the *Home Depot* decision. The Governor vetoed AB 1455, requesting that the CSLB submit a proposal, which would include only specialty classes for general contractors who have consumer protection needs. The Governor also stated, “*Not all of the current 42 specialty classifications which require special licensure are in the best interest of the building industry or the public. Requiring additional years of experience, testing and delay for individuals in trades where there is no consumer risk limits work options for general contractors, drives prices up to consumers and is simply anti-business and anti-competitive.*”

By vetoing this bill, the Governor now allowed for a general contractor to perform work in any other specialty area without restriction, even if it was in an area in which the contractor had no experience or skill. This was of grave concern to the JLSRC and the CSLB. The JLSRC directed the CSLB to respond to the Governor’s request, attempt to resolve the B-Contractor dispute, and at the same time review all of its specialty classifications and determine which ones could be consolidated, redefined or eliminated, and report its findings and recommendations by October 1, 1998. The JLSRC also commented that: “The Joint Committee is not supportive of specialty license classifications absent compelling findings that classification protects consumers.”

Issue Involving General Building (B) License Classification. Changes to the General Building (B) classification flowed from a cooperative effort among CSLB, the Senate Business & Professions Committee, industry representatives, and the Administration. Through the provisions of SB 857 (Statutes of 1997, Chapter 812), Business & Professions Code § 7057 now specifies, in summary, that a General Building (B) Contractor may legally undertake:

- A prime contract or subcontract that involves framing or carpentry;
- A prime contract or subcontract that involves at least two unrelated trades or crafts other than framing or carpentry (framing or carpentry cannot be counted as one of the two unrelated trades or crafts);
- A contract for a single Specialty trade (plumbing, electrical, sheet metal, etc.) provided the work of the contract is subcontracted to a properly licensed Specialty contractor; or
- A contract for the work of any Specialty license classification for which they hold a Specialty license classification.

As indicated by CSLB, the redefined scope of work for the General Building (B) classification provided under SB 857, will now increase the business opportunities for (B) contractors and assures that specialty work will be performed by a General Building contractor, or Specialty contractor who has demonstrated the requisite knowledge and expertise.

Issue Involving Specialty Contractor (C) License Classifications. Prompted by the JLSRC and the Administration, the CSLB used its Classification Review and Regulation Reduction Task Force to review all 42 specialty licenses. The review conducted by the Task Force involved public hearings, an industry survey, CSLB data analysis, and a “Specialty Classification” study. Based on this review, the Task Force made recommendations to the Board concerning the consolidation and modification of certain specialty license classification. It is not clear whether the Task Force made any recommendations concerning the elimination of any classifications.

The CSLB reviewed the recommendations of the task force and agreed to consolidate only seven of the specialty contractor (C) license categories. Additionally, the Board decided it is not in the best interest of consumers to eliminate any specialty license classifications, considering the results of the health and safety survey, public testimony, and potential financial risks to consumers. On June 29, 1998, the Board sent a letter to the Governor outlining the final results of the Board’s review of the its licensing classification and certification system.

The CSLB submitted to the JLSRC for review a copy of its one-page “Health and Safety Survey” that it sent to industry/trade associations and some city/county building departments. It also submitted a breakdown of complaint data for each specialty classification during the period from 1993 through 1996. The CSLB indicated that its Task Force had conducted a thorough analysis of specialty license classifications.

The JLSRC has not received any analysis of the conclusions or justifications that were reached concerning each of the specialty (C) license classification by the Task Force. Nor has it had an opportunity to review the study performed by the Task Force or the results of the survey. Based on the complaint data, there are certain classifications that have little if any complaints filed against them. This would indicate that the potential for public harm in these areas is minimal. It is also unclear why the survey was mostly sent to industry/associations, which have a vested interest in maintaining these licensing classifications.

Issue Involving “Merit Badges” for Contractors. In 1998, the Registrar for CSLB proposed a plan to develop a type of “merit badge” for contractors. Under this proposal, CSLB would identify areas of specialization within the existing contractor classifications that are important to consumers. The Board would then develop a voluntary testing and certification system covering these specialties. Once a contractor passed the test, he or she would be allowed to advertise as a certified specialist in that area. The Registrar analogized this approach to specialty certifications in the medical field. He noted that such a system would provide CSLB with flexibility to deal with new and developing techniques of construction and provide incentives and an acknowledgment to contractors who make an extra effort. Although some Board members voiced concerns about the process of identifying the subspecialties and the problem of ensuring that a licensee remains competent once the merit badge is awarded, CSLB approved the concept and instructed the Registrar to identify key components of the merit badge system by March 31, 1999. It was indicated that the Board will seek legislation creating this system by October 1, 2000.

STAFF RECOMMENDATION: *The Board should conduct a more thorough and objective analysis on the need to continue with the 42 specialty classifications.*

QUESTION #1 FOR THE BOARD: *What has the Board done to consolidate, redefine or eliminate some of the “specialty classifications” for contractors? Should the Board adopt a “merit badge” plan to certify contractors in specialty areas?*

ISSUE #2. ARE THERE STILL CHANGES NECESSARY TO PROTECT CONSUMERS WHO ARE HARMED BY CONTRACTORS, OR THEIR REGISTERED SALESPERSONS, WHO USE RETAIL INSTALLMENT CONTRACTS TO CREATE A SECURITY INTEREST ON A HOMEOWNER’S PROPERTY?

BACKGROUND: Under specified conditions of the Contractors License Law, the sale of home improvement goods and services by Home Improvement Salespersons is illegal unless such individuals have registered with the CSLB.

The JLSRC’s initial sunset review questionnaire asked about the recommendation of the CSLB to eliminate the registration of home improvement salespersons. In response, the CSLB showed evidence that very few legal actions were pursued against home improvement salespersons, even though CSLB has the authority to discipline them. This is because the law and CSLB hold the contractor responsible for the actions of the salesperson who sells the job. Even without registration, CSLB would maintain authority to enforce against individuals who violate the law.

CSLB had sponsored AB 771(Margett) in the 1995/96 session to repeal the salesperson registration as needless regulation. However, the salesperson repeal language was dropped due to opposition from a number of consumer groups. There was concern that protections enacted in 1994 would be nullified by the repeal of the salesperson registration requirement. Specifically, the 1994 legislation amended section 7153 of the Business & Professions Code to preclude a contractor from taking a security interest under a home improvement contract unless the salesperson is duly registered by the CSLB.

The JLSRC supported the elimination of registration for home improvement salespersons based on the recommendation of CSLB that there was no consumer risk involved. However, it was not made unaware of the prior opposition to the CSLB efforts to eliminate this registration requirement. SB 825 was introduced by the Chair of the JLSRC with the repeal of the registration requirement for home improvement salespersons. Shortly thereafter, several consumer groups indicating their opposition to this effort contacted the JLSRC. A meeting was held with all concerned groups and the CSLB. The Board was unable to convince these groups of the need to eliminate this requirement. This language was subsequently dropped from the bill.

The CSLB now recommends that the pursuit of legislation to repeal the salesperson registration requirement be postponed while the issues related to security interests and home improvement contracts undergo legislative review.

There were two companion bills introduced in 1999 that were intended to deal with the incidence of home equity lending fraud by establishing certain requirements a seller must follow in certain retail installment sales contracts involving home improvements; SB 99 (Hughes) and SB 187 (Hughes).

The Governor vetoed SB 99 and signed SB 187.

SB 99 would have established a number of procedures that a seller would have had to follow in certain retail installment contracts to determine if the person entering into such a contract had the ability to repay the loan and not be “at-risk” if he/she entered into this loan. SB 187 will prohibit the seller of a home improvement contract from taking a security interest (other than a mechanic’s lien) on the principal residence of a buyer who is 65 years or older. The bill also will impose civil remedies and penalties for violation of current Business Professions Code provisions prohibiting a lender in a home improvement contract from making direct payments to the contractor.

QUESTION #2 FOR THE BOARD: *Should there be any changes to the registration of home improvement salespersons? Has the CSLB investigated the extent to which consumers are harmed by salespersons or contractors who use retail installment contracts for home improvements that create a security interest on the homeowner’s property? What action is the CSLB taking concerning this problem?*

ISSUE #3. SHOULD CSLB CONTINUE TO CERTIFY AND REGULATE ASBESTOS CONTRACTORS OR THOSE CONTRACTORS INVOLVED IN THE REMOVAL OR REMEDIAL ACTION OF HAZARDOUS SUBSTANCES?

BACKGROUND:

The Certification and Regulation of Asbestos Contractors. The JLSRC’s initial sunset review questioned whether CSLB should continue to certify and regulate asbestos contractors. It was unclear whether CSLB had the expertise or ability to investigate or take action against asbestos related violations of the Labor Code. It recommended to CSLB that it review this issue prior to the next sunset review.

In response, CSLB agreed that it did not have the expertise to determine whether a contractor has violated laws pertaining to asbestos. Though CSLB noted that while it has the authority to discipline contractors who violate such laws, it must rely on the investigations and testimony of Department of Occupational Safety and Health (DOSH) experts or officials from a local health agency. Currently, asbestos contractors must complete applications with both CSLB and DOSH before undertaking asbestos-related work.

The CSLB recommended that the responsibility for the asbestos certification program be transferred to DOSH and forwarded proposed language to DOSH. DOSH raised a number of issues that the legislation must address before transferring the asbestos certification. CSLB now indicates that it will continue to work with DOSH to resolve their concerns in order to transfer the program, eliminate the requirement that applicants apply to both agencies and allow asbestos contractors to enjoy “one-stop shopping.” In the meantime, CSLB intends to continue to issue disciplinary actions against contractors who violate asbestos laws, pursuant to investigations and findings of fact by DOSH.

The Certification and Regulation of Contractors Involved in Hazardous Substance Removal. Legislation enacted in 1986 (Statutes of 1986, Chapter 1443) gave CSLB responsibility for issuing a certification exam to contractors who engage in the removal or remedial action of specified hazardous substances (HAZ-MAT). In addition, CSLB has the authority to discipline contractors who perform this work without holding HAZ-MAT Certification.

The JLSRC questioned whether HAZ-MAT certification by CSLB was appropriate. It was unclear whether CSLB had the expertise or ability to investigate or take action against contractors who were involved in removal or remedial action of specified hazardous substances, and who violated provisions of the Health and Safety Code. It recommended to CSLB that it review this issue prior to the next sunset review. In response, CSLB noted that it did have the authority to discipline but not the expertise to determine whether a contractor has followed proper procedures in the removal or remedial action of HAZ-MAT substances.

Initially, the CSLB recommended that the responsibility for the HAZ-MAT Certification be transferred to the Department of Toxic Substances Control (DTSC) because the agency has the necessary expertise to regulate the program. However, DTSC opposed the recommendation because the agency has no investigative staff, no mechanism to process applications, and no method to test for the HAZ-MAT Certification. Currently, the DTSC holds property owners responsible for proper disposal procedures. Typically, the property owners hire registered engineers to develop disposal plans and oversee the disposal work. In cases of improper disposal of the hazardous materials in question, the DTSC notifies the owner that additional work is needed. The DTSC performs no other enforcement action.

After meeting with the DTSC and discussing these issues, CSLB reached the conclusion that the public interest would be better served by not transferring the HAZ-MAT Certification Program to DTSC. In a letter to DTSC, the Board indicated that there was no meaningful evidence to indicate that a shift of responsibility is necessary at this time. The letter also indicated a commitment of both agencies to improve the flow of information, especially as it regarded hazardous sites identified by DTSC and those on the National Priorities List. However, there was

no discussion of how DTSC's expertise could be utilized or what areas of responsibility each agency may have for violations of the Health and Safety Code.

STAFF RECOMMENDATION: *A sunset date should be placed on the asbestos certification program allowing the CSLB and DOSH sufficient opportunity to transfer responsibility of this program to DOSH. Both CSLB and DTSC should enter into a memorandum of understanding (MOU) to utilize the expertise of DTSC and define what areas of responsibility each agency may have for violations of the Health and Safety Code.*

QUESTION #3 FOR THE BOARD: *What action has the Board taken to determine whether or not it should continue to certify and regulate asbestos contractors or those involved in the removal or remedial action of hazardous substances, and what recommendations does it have?*

ISSUE #4. THE BOARD HAS EVALUATED ITS CONTRACTORS EXAMINATIONS AS REQUESTED BY JLSRC, BUT HAS BEEN SLOW TO HAVE THESE EXAMINATIONS VALIDATED AND TO DETERMINE WHETHER THEIR WAIVERS FOR EXAMINATIONS ARE APPROPRIATE.

BACKGROUND: In 1993, the Assembly Consumer Protection Committee reviewed the examinations provided to contractors by CSLB. It found that the passing rates for general contractors and specialty contractors was extremely high, allowing for incompetent contractors to practice. During the JLSRC review in 1996, it found that some passage rates were still relatively high. The JLSRC recommended that the CSLB conduct an independent evaluation and audit of its examinations and have the Department of Consumer Affairs Office of Examination Resources conduct occupational analyses of all of its examinations to ensure they are testing the appropriate job-related skills and are legally defensible. The JLSRC indicated that the occupational analyses and validation of these examinations should be initiated as soon as possible. It also requested the CSLB to determine if all of its examination waivers assure that the applicant has the requisite skills for licensure.

In September 1998, the CSLB began an independent audit of its examinations. This audit was completed in April 1999. The audit report indicated that, due to limited personnel resources, the CSLB has not been able to update the occupational analyses of many of its licensing examinations, and that many of these occupational analyses are more than thirteen years old. In addition, the audit found that the CSLB has not been able to replace overexposed test questions in the more frequently administered licensing examinations. It provided the Board a priority list for revising its examinations and a time frame for each. (It should be noted that the General (B) Building contractor examination has the highest need for revision.)

To address the issues raised in the audit report, the CSLB indicated that the Legislature has authorized the necessary funding for additional testing specialists. The Board has set a schedule for conducting occupational analyses and updating examinations for each classification over the next five years. The Board will maintain a schedule whereby a new occupational analysis for each classification will be conducted every five years, subject to continuing availability of resources.

To minimize overexposure of test questions, the Board will utilize additional testing personnel to conduct periodic test question development workshops with subject matter experts. Maintaining an ongoing examination development schedule will enable the Board to increase the size of its question pools and to ensure that examinations remain consistent with current practice in between occupational analyses.

The CSLB has been aware of the problems associated with its examinations since 1993, and again in 1996. The JLSRC was very clear about moving ahead with validation (occupational analyses) of its examinations right away. Three years have now elapsed (and six years since the issue was first raised) and it is still unclear when these examinations will have occupational analyses performed on them and finally be validated. (The JLSRC has not received a copy of the Board's schedule.) The Board also indicated that it is still in the process of evaluating whether all waivers of its examinations are necessary.

The need to perform an occupational analysis is even more critical now because of recent court decisions. The courts have established that in order to protect the civil rights of applicants for professional licensure, examinations used to assess competence must meet the test of "job-relatedness." According to the U.S. District Court, this standard requires periodic validation of each examination a candidate is required to take. While the courts have not specified a standard for periodic review, a recent California case (*AMAE, et.al. vs. California Commission on Teacher Credentials*) has indicated that an analysis performed five or more years prior does not provide a sufficient defense to its validity. Therefore, it would appear as if courts may now invalidate an examination if an occupational analysis has not been performed within five years, and will find it unrelated to current knowledge, skills, abilities necessary for the profession.

STAFF RECOMMENDATION: *The CSLB should move forward with performing occupational analyses on its examinations without delay. It should ensure, based on the priority list provided within its audit report, that this is accomplished by October 1, 2001, and that the Board reports on its progress to the JLSRC at that time. It should also report to the JLSRC as to whether the waivers for its examinations should be eliminated.*

QUESTION #4 FOR THE BOARD: *Has an independent analysis been conducted on the examinations provided by the Board? Why the delay in having an occupational analysis performed on all tests given to contractors? Provide the JLSRC with a schedule for performing occupational analyses and having examinations validated. Should some or all examination waivers be eliminated?*

ISSUE #5. CURRENT FORMS OF RESTITUTION PROVIDED TO CONSUMERS FOR FINANCIAL INJURY SUFFERED BY CONTRACTORS ARE INSUFFICIENT.

BACKGROUND: When a contractor goes out of business, abandons a construction project, fails to perform on the contract, does not follow plans or specifications, or is involved in poor workmanship, the extent of meaningful consumer protection can be woefully lacking. Frequently, the homeowner's only recourse is to sue in small claims court or file a civil action against the contractor. The homeowner can also attempt to collect on the \$7500 surety bond required for all contractors. However, only a very small portion of overall damage claims made

by consumers are ever paid out. (Pay out is generally between \$5 million and \$6 million. This is in stark contrast to the estimated contract value for complaints filed with the Board of between \$60 million and \$100 million annually.) The potential dollar amount for injury beyond the complaint amount is also considerable, but difficult to estimate.

The license bond has been called “bogus” because it offers so little protection to consumers in light of the magnitude of potential losses -- both because of its low amount and because of the limitations on making a claim and obtaining any payment from the surety. For pay out of a bond, the consumer has the burden of proving that an actual violation of the contractor’s law has occurred. This means that the Board has pursued the case beyond the investigatory stage and filed an accusation against the contractor. This could take anywhere from 1 to 2 years, and in some instances longer. Also, multiple claimants on the bond reduce the overall amount available to the consumer, and secondary damage due to the contractor’s poor workmanship or negligence on the work site is not covered.

There are a number of states that have adopted recovery funds to address the financial injury of consumers. To date, there are only about 15 states that have some form of recovery fund for consumers.

The JLSRC directed the Board to examine this issue and report back to the JLSRC before its next review. During this time the Board has considered several proposals and alternatives. In September 1998, the Registrar for the Board investigated the possible methods for providing consumers with a “safety net” and presented to the Board several proposals for them to consider. They included: (1) a “step-bonding” program based on the amount of the prime contract—the higher the amount of the contract, the higher the required bond; this would bring the existing bonding requirement in closer alignment with the potential loss; (2) a mandatory payment or performance bond—again tied to the value of the contract; and (3) the establishment of a recovery or restitution fund, funded by contractors as a requirement of licensure and maintained by the Board.

As indicated by the Center for Public Interest Law (CPIL), most Board members opposed all of the Registrar’s proposals. Members opposed the bond recommendations, stating that they would act as a “barrier to entry” for new applicants and may not be acceptable to the legislature. The idea of a restitution fund financed by contractors’ licensing fees and administered by CSLB was also not well received by the Board. Members noted that any increased costs imposed on contractors would be passed on to consumers. One Board member vehemently opposed the restitution fund idea, arguing that these types of funds reward consumers who do not act wisely during contract negotiations at the expense of consumers and contractors who do. He argued that **consumers should be responsible for protecting themselves**. (This member is no longer with the Board.)

After the CSLB rejected proposals presented by its Registrar, its staff commenced work on a variety of proposals to protect consumers and enable them to better protect themselves. It is now proposing what it titles as the “Home Improvement Protection Plan (HIPP) for the year 2000. The Board will outline this proposal during the hearing.

QUESTION #5 FOR THE BOARD: *Does the Board believe that current forms of restitution to the consumer are sufficient? What other alternatives should the state consider to protect the consumer against financial injury as a result of a contractor's fraud, poor workmanship, malfeasance, abandonment, failure to perform, or other illegal acts? Please discuss the Board's "Home Improvement Protection Plan" proposal.*

ISSUE #6. ARE CONSUMERS BEING HARMED BY THE USE OF THE "MECHANICS LIEN" LAW AND SHOULD CHANGES BE MADE TO THE LAW TO PROTECT INNOCENT CONSUMERS AGAINST THE USE OF THIS LAW?

BACKGROUND: There are several bills pending in the 1999/2000 legislative session concerning problems that may be associated with the use of the "mechanic's lien" law. This law is intended to protect the interests of those who provide labor or materials toward the improvement of the property of others, known as a "work of improvement." Section 3 of Article 14 of the California Constitution provides that "mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens." A mechanic's lien is a claim against the real property on which the claimant has furnished labor or material, for the value of the labor done or material furnished. It gives the person who has furnished services, equipment, or material for a work of improvement a security interest in the improved real property that may be foreclosed upon if the claim is not paid. The major classifications of those who are entitled to a lien are contractors, subcontractors, material suppliers, artisans, and laborers. The lien must be recorded within the applicable time period specified by law, in the county in which the property is located. A contractor or material supplier is entitled to enforce a mechanic's lien against property only if he or she has given preliminary notice in accordance with the mechanic's lien law. Compliance with the preliminary notice provision is strictly enforced.

Two notable bills, ACA 5 and AB 742, were introduced by Assemblymember Honda to make substantial changes to this law. ACA 5 would create an exception to the constitutional mechanic's lien provision where the property is a single-family, owner-occupied dwelling that is the primary residence of the owner of the property if the owner has paid in full, to the person to whom the owner is contractually obligated to make payment, the amount owed by the owner for the labor bestowed and material furnished upon that property that would form the basis for the claim of lien. ACA 5's companion measure, AB 742, would prohibit non-prime contractors from recording a mechanic's lien on such a dwelling where the owner has paid the prime contractor in full, and enable non-contractors who have not been paid to seek compensation through a new industry-supported recovery fund.

According to the author, ACA 5 and AB 742 seek to end "the victimization of homeowners, subcontractors, material suppliers, and laborers by unscrupulous prime contractors." The legislative analyses of these bills describe the steps of this problem as follows: The homeowner enters into a contract with a prime contractor for a home improvement project. The prime contractor hires laborers and subcontractors, and purchases supplies from a material supplier.

Upon completion of the project, the homeowner pays the prime contractor in full, but the prime contractor fails to pay the laborers, subcontractors, and material suppliers—who are now victims of the prime contractor’s breach of contract. Under current law, once the laborers, subcontractors, and materials suppliers have failed to be paid by the prime contractor, they have the right to collect from the homeowner via a mechanic’s lien. According to the author, this right to collect from the homeowner makes sense when the homeowner has not paid the prime contractor. However, it makes no sense if the homeowner has paid the contractor in full. According to the author, “it is important to recognize that the sole person at fault in this hypothetical is the unscrupulous prime contractor. There is no dispute that laborers, subcontractors, and material suppliers should be paid, but the homeowner shouldn’t be forced to pay twice.”

According to Assemblymember Honda, the challenge is to design a carefully tailored solution that will protect innocent homeowners, laborers, subcontractors, and material suppliers. ACA 5 would exempt certain classes of homeowners from otherwise applicable mechanic’s lien liability, while AB 742 would create the Contractor’s Default Recovery Fund (CDRF), an industry-supported fund to pay laborers, subcontractors, and material suppliers. AB 742 would also prohibit those who provide labor, materials, or services to an owner-occupied residential work of improvement (home improvement) pursuant to a contract entered into on and after January 1, 2000 from recording a lien upon that real property for the value of that labor, materials, or services if the owner has paid the prime contractor in full pursuant to a contract between the owner and the prime contractor. Laborers, subcontractors, and material suppliers who are victimized by a prime contractor would seek payment from the CDRF when the homeowner meet the conditions prescribed by ACA 5. This measure is currently a two-year bill located in the Assembly Judiciary Committee, and AB 742 is a two-year bill located on the inactive file in the Assembly.

Another bill by Senator Polanco, SB 1151, would amend Business and Professions Code section 7081.5, which requires a licensed contractor—prior to entering into a contract with an owner for home improvement or swimming pool construction work—to provide a notice regarding the state’s mechanic’s lien laws to the owner, owner’s agent, or the payer. Failure to provide the notice is grounds for disciplinary action. This bill would additionally require the contractor to obtain a written receipt which indicates that the person has received and read the notice; require the receipt to be maintained for inspection; and make failure to provide the notice and obtain the receipt grounds for disciplinary action. SB 1151 is currently a two-year bill located in the Assembly Consumer Protection Committee.

A bill by Assemblymember Floyd, AB 1642, would provide that the failure of a contractor, or of his/her agent or officer, to pay monies when due for materials purchased or services rendered in connection with his/her operations as a contractor for residential home improvement work, when he/she has the capacity to pay or has received funds for that particular work, project, or operation that were sufficient to pay for the services rendered or materials purchased, and if the failure to pay results in a mechanic’s lien being filed against residential property for that work, shall result in the automatic suspension of the contractor’s license. This bill would require the Registrar of Contractors to notify the licensee of this suspension in writing, and permit the licensee to contest the suspension within 15 days after service of this notice by written notice to the Registrar. AB 1642 would also create a rebuttable presumption that the failure of a contractor to pay for any goods or serviced rendered in connection with a contract, when he/she has received sufficient

funds for that particular work, is a willful and deliberate violation for purposes of these provisions. AB 1642 is currently a two-year bill located in the Assembly Consumer Protection Committee.

A bill by Assemblymember Margett, AB 171, would amend section 3258.5 of the Civil Code, which requires the owner of a work of a public or private improvement to sign and verify any notice of completion or notice of cessation of work, and that the notice be recorded in the office of the county recorder of the county in which the site is located. This bill would require the owner of a public or private work of improvement to notify, by registered or certified mail, the

original contractor and any claimant who has provided a preliminary 20-day notice that a notice of completion or notice of cessation has been recorded, within ten days of recording that notice of completion or notice of cessation. Failure to give notice would extend the period of time in which the contractor or claimant may file a mechanic's lien or stop notice to 90 days (which would be the sole liability incurred for failure to give notice). The bill would also define an "owner" for these purposes as a person who has an interest in real property, or his/her successor in interest, but would exclude a person who occupies the real property as his or her personal residence.

QUESTION #6 FOR THE BOARD: *Should there be any changes to the "mechanics lien" law? Has the Board taken any position on the aforementioned legislation? Has the Board investigated the extent to which contractors have harmed consumers by the use of the mechanic lien law?*

ISSUE #7. IT IS UNCLEAR WHAT ACTION THE CSLB TAKES ONCE A CIVIL LAWSUIT HAS BEEN FILED AGAINST A CONTRACTOR OR A SETTLEMENT AGREEMENT IS REACHED BETWEEN THE CONSUMER AND THE CONTRACTOR.

BACKGROUND: Some consumers have complained that the Board declines to take independent or additional action when a consumer files civil suit against a licensee, and will actually close complaints pending the outcome of court action. They have also indicated that the Board will not pursue any action against a contractor upon the settlement of a civil case, and have cited a 1948 court case, *Terminix Co. v. Contractors State License Board*, for taking that position.

QUESTION #7 FOR THE BOARD: *Does the Board take immediate action against a licensee who violates the Contractors' License Law, independent of whether or not the consumer files a lawsuit or whether a settlement agreement in the lawsuit has been reached? What application does the Terminix case have to actions taken by the Board against a licensee?*

ISSUE #8. SHOULD THE BOARD MAKE ANY IMPROVEMENTS TO ITS VERIFICATION PROGRAM OF APPLICATIONS AND INCLUDE A FINGERPRINT CHECK PROGRAM TO CHECK PRIOR CRIMINAL HISTORY OF APPLICANTS?

BACKGROUND: During hearings in 1993 by the Assembly Consumer Protection Committee, the Board was criticized for only investigating about 3% of all applications as required by law. In response to this, the Board initiated a program whereby 50% of applications were verified for work experience, or other related information, to determine if there was a greater number of falsifications and ascertain whether there was a need to increase the number of investigations. (The eventual goal of this program was to verify 100% of the applications.)

The Board discontinued this program due to lack of funding. (A BCP to continue this program was denied by the Department of Finance. They argued that there was only an 8% problem and the cost did not justify continuing with this program.) The Board recommended at that time continuing with this program and would liked eventually to do 100% verification rather than just 50%. It is unknown whether the Board still believes a 100% verification program is necessary.

Other boards and the Department have initiated a fingerprint check program to also verify applications and to check on potential for a prior criminal record concerning licensees. It is unknown whether the Board has considered using a fingerprint check program, or whether it would be too costly.

QUESTION #8 FOR THE BOARD: *Should the process by which the Board reviews, verifies and investigates applications for licensure be improved, along with the addition of a fingerprint check program similar to other Boards and the Department?*

ISSUE #9. SHOULD THE “SUBSTANTIAL RELATIONSHIP” CRITERIA ON CRIMINAL CONVICTIONS BE EXPANDED AS IT APPLIES TO HOME IMPROVEMENT CONTRACTORS AND SALESPERSONS?

BACKGROUND: Business and Professions Code sections 475 and 490 permit the Board to discipline or deny a contractor’s license if the licensee or applicant has been convicted of a crime which is “substantially related to the qualifications, functions, or duties” of a contractor. Section 868, Title 16 of the CCR, sets forth the kinds of crimes that are deemed “substantially related” for purposes of license discipline or denial, including submitting false vouchers to obtain construction loan funds and not using the funds for the purpose for which the claim was submitted; willfully rebating to or on behalf of anyone contracting with a licensee any part of money tendered the licensee for the provision of services, labor, materials, or equipment; and theft of building materials or equipment for use on a construction project.

At a Licensing Committee roundtable meeting on April 1 of this year, and at CSLB’s April 21 meeting, Board staff discussed the potential expansion of section 868 as it applies to home improvement contractors and salespersons. Staff indicated that the section’s emphasis on construction-related offenses is too narrow, and seeks to include all felonies and other criminal acts involving fraud, misrepresentation, and/or dishonesty as “substantially related” to the duties of a contractor.

The Center for Public Interest Law (CPIL), which observed this meeting, indicated that during the discussion concerning this issue, some Board members made a “double jeopardy”-like argument, expressing the view that once a contractor has “paid his/her debt” for a crime, it is

unfair for a licensing board to then withhold or discipline the licensee. Staff noted that the primary purpose of the Board is to protect consumers, including future consumers of CSLB licensees, from contractors who are negligent, dishonest, or dangerous. This purpose requires the Board to look beyond the immediate duties of a contractor to situations in which a contractor may find him/herself, and protect consumers from contractors who cannot handle themselves appropriately in those situations. Because home improvement contractors work within consumers' personal residences and are exposed to the belongings of the consumer, excluding contractors who have committed crimes of moral turpitude may be in the best interests of consumers.

Staff also noted that section 869, Title 16 of the CCR, which sets forth rehabilitation criteria, should be amended, and that the amount of time that has elapsed between the conviction and license application or renewal (and the presence or absence of subsequent bad acts during that time period) should be specified as a critical factor in determining whether a licensee with a criminal history has rehabilitated him/herself. Due to the hesitance of the Board members, staff promised to study these issues further and raise them at a future meeting.

QUESTION #9 FOR THE BOARD: *Should the “substantial relationship” criteria on criminal convictions be expanded as it applies to home improvement contractors and salespersons?*

ISSUE #10. SHOULD THE BOARD IMPROVE OR BROADEN ITS DISCLOSURE POLICIES CONCERNING LICENSED CONTRACTORS?

BACKGROUND: Consumers have complained that they are misled by information provided by the Board concerning the status of a contractor's license. That the Board's statement that a licensee is in good standing is no guarantee that there aren't past civil or criminal judgments against the licensee, or that they have repeated complaints pending, or have been involved in prior arbitration proceedings, or stipulated or settlement agreements. They have indicated that the Board should clearly advise them that they are only providing limited information concerning the status and background of the contractor, or disclose all relevant information concerning the licensee so they can make informed decisions about hiring a contractor.

QUESTION #10 FOR THE BOARD: *Should the Board broaden or improve licensee information that it makes available to the public? Should consumers receive information on contractors who have repeated complaints, or when there is an arbitration award (whether or not the contractor has paid the award), a stipulation or settlement agreement, or a civil or criminal judgment?*

ISSUE #11. THE CSLB IS REENGINEERING ITS ENTIRE COMPLAINT AND INVESTIGATION PROCESSES TO SHORTEN THE TIME FRAME FOR PROCESSING COMPLAINTS AND THE COMPLETION OF INVESTIGATIONS. HOWEVER, THE ACTUAL IMPACT AND RESULTS OF THESE CHANGES ARE STILL UNKNOWN.

BACKGROUND: During the prior review of CSLB, the JLSRC had commented that the Board had made significant efforts in attempting to shorten the time frame for the handling of complaints and investigations. It was indicated that about 60% of complainants surveyed by the Board believe that their cases were processed in a timely fashion. However, the standard time frame for the handling of complaints is still six months, and a substantial number of investigations take from one to two years to complete before any legal action is taken. The JLSRC recommended that the CSLB should attempt to reengineer this process to shorten the time frame for processing of complaints and completing investigations.

In 1998, the Board's Registrar introduced a plan to completely restructure CSLB's intake and investigation process. Essentially, the plan called for the closure of fifteen of the Board's district offices; in their place, CSLB would establish two Intake-Mediation Centers and two Investigation Centers. The centers would be located in San Diego, Buena Park, Oakland, and Sacramento. The Board's investigative staff would be expanded and equipped with mobile offices, including a laptop computer, modem, cellular phone, and fax machine. Complaints would come in through a toll-free number to a central office (Sacramento), where they would be triaged and downloaded daily to the appropriate field officer. The officer would then follow up on the complaint by phone and in person. The Registrar's plan was to use the money saved by consolidating the physical plants to increase and properly equip the investigative staff. It was believed that this increase in staff numbers and ability would increase effectiveness and reduce the time from case filing to disposition.

The CSLB approved the triage concept, but opposed the overall restructuring plan. They argued that licensees prefer the convenience and familiarity of having access to CSLB via a local office, and several members voiced their intent to oppose any restructuring plan that includes closure of local offices. However, in January 1999, the Board approved staff's proposal to implement a scaled-back version of the restructuring program as a pilot project initially covering four Southern California Counties -- Los Angeles, Orange County, Riverside and San Bernardino.

It is unknown what the results and impact of the reengineering project may have on the overall effectiveness and efficiency of the CLSB complaint and investigative processes. The Board indicates that through centralized initial processing, cases requiring investigation will be getting to investigators sooner and will be assigned to the most appropriate resources. It also anticipates improved performance by investigators and increased legal actions.

The CLSB had indicated that it will review the results of the pilot program at its January 2000 meeting with an eye toward statewide implementation.

STAFF RECOMMENDATION: *The CSLB should report the initial results of its pilot project to the JLSRC and the Department by February 2000.*

QUESTION #11 FOR THE BOARD: *Has the Board been able to reduce the time frame for processing complaints and completing investigations. Please explain the pilot project that the Board is implementing to re-engineer its complaint and investigation processes and how it will improve complaint processing and investigation of those complaints for consumers. Does this include closing down district offices? If so, then please provide information concerning the following:*

- a) *What offices have been closed, which ones are still being paid for, and for how long?*
- b) *What other closures are anticipated?*
- c) *What impact will closures have on consumers? How will consumers file complaints and contact the Board in areas where offices have been closed?*
- d) *What impact will closures have on employees, and the Board and its licensees?*
- e) *Is the Board and Department fully cognizant of the scope and impact of the “pilot project” and actions taken so far by Board staff?*

ISSUE #12. IT IS UNCLEAR WHETHER THE BOARD IS FOCUSING ENOUGH OF ITS RESOURCES ON VIOLATIONS OF THE CONTRACTORS ACT BY “LICENSED” CONTRACTORS WHEN COMPARED TO ITS EFFORTS TO “ERADICATE UNLICENSED CONTRACTORS.”

BACKGROUND: The CSLB has indicated that it continues to give the “eradication of illegal, unlicensed contractors a very high priority.” That those individuals cause a disproportionate amount of damage to the public because they act without obtaining permits, often demand cash for payment, and are difficult, if not impossible, to trace when inevitable problems occur. As part of this enforcement activity, several geographical areas were targeted by concentrating enforcement staff on stings and sweeps. Stings and sweeps are usually done in partnership with local media. Such exposure, as stated by the Board, helps educate consumers on the dangers of hiring unlicensed contractors, and encourages the unlicensed to become licensed.

The Board also stated it has measured unlicensed activity levels before and after the stings to assess their effectiveness. The results showed that the number of advertisements by unlicensed individuals declined significantly in the months following these actions. In fact, over the last few years the number of reactive complaints against non-licensees has declined in direct proportion to the proactive work done by the enforcement program.

The Board recently supported a measure, AB 952 (Wiggins), and sponsored by the State Building and Trade Council, to create a major fraud investigation unit within CSLB to go after licensed and unlicensed activity. The cost of this unit would have been \$750,000. The Governor vetoed this bill.

There has been some criticism leveled at the Board that they spend a disproportionate amount of time and resources going after unlicensed activity and not enough on dealing with violations of the Contractor’s Act by licensed contractors when complaints are filed with the Board.

QUESTION #12 FOR THE BOARD: *Please indicate what portion of enforcement actions by the Board over the past four years involve unlicensed contractors versus licensed contractors, and what portion of complaints “initiated by the Board” over the past four years involve unlicensed contractors versus licensed contractors. What portion of the Board’s enforcement Costs over the past four years were spent on “eradication of illegal, unlicensed contractors?” Provide the results that the Board has compiled to measure the effectiveness of its sting and sweep operations to curtail unlicensed activity.*

ISSUE #13. IT DOES NOT APPEAR AS IF THE CSLB HAS BEEN ABLE TO INCREASE THE REPORTING OF VIOLATIONS BY LOCAL BUILDING OFFICIALS.

BACKGROUND: When the JLSRC reviewed CSLB in 1996, it noted that of 30,000 complaints filed with CSLB, only 127 were filed by state or local agencies. JLSRC indicated that local building officials are considered to be in the best position to discover and report incompetent or unlicensed contractors. The Board thinks that this lack of referred complaints is due in part to a lack of awareness on the part of the local agencies of laws pertaining to contractors.

The JLSRC recommended that CSLB should implement a program to work more closely with local building officials and the State Buildings Standards Commission to provide ongoing training and information to building officials concerning potential violations of the Contractor's Act. It was intended that this program and effort by the CSLB would improve reporting of violations of the Contractor's Act.

In November 1998, the Board held a roundtable meeting with the California Building Officials (CALBO) leadership in Riverside to discuss better communications and how the Board could better serve Building Officials. The meeting resulted in CSLB putting together a pamphlet of frequently asked questions for Building Officials. (This pamphlet was put on the Board's website. The roundtable discussion also resulted in a cooperative effort between the Board and CALBO to jointly sponsor legislation that will make it easier for building officials to verify contractors' workers' compensation insurance.

The Board indicates that it is actively working with the management of both CALBO and International Conference of Building Officials, as well as with local building departments, in order to provide better building code enforcement. CSLB enforcement staff in various geographical locations throughout the state have also been attending the local building official meetings on a quarterly basis to maintain this liaison work.

This increased cooperation is also listed as an objective in the Board's 1999/2000 Strategic Plan. To meet this objective, roundtable discussions have been held in various locations throughout the state, in conjunction with other Board meetings, to identify ways in which CSLB and CALBO members can cooperate to provide better enforcement of building codes. In addition, letters were sent by CSLB enforcement supervisors throughout the state to their local building departments detailing areas of mutual assistance, such as direct telephone numbers to contact CSLB staff, waiving of fees for documents and witness appearances by both agencies, attending the other agency's staff meetings when requested and providing assistance with contractors who ignore local requirements. The CSLB has indicated that their enforcement staff, as well as the Board as a whole, will continue to build on this relationship in order to provide more effective regulation of contractors who do not comply with local codes.

Although the Board has made significant efforts to work more closely with building officials, reporting of actual violations of the Contractor's Act by local agencies are still low. In FY 1998/99, for example, only 71 complaints were filed by local agencies, out of a total of 26,076 complaints filed with CSLB.

QUESTION #13 FOR THE BOARD: *Has the Board been able to improve on the reporting of violations of the Contractors' License Law from local building officials?*

SSUE #14. SHOULD THE CONTRACTOR'S STATE LICENSE BOARD BE CONTINUED, OR SHOULD ITS RESPONSIBILITIES BE TRANSFERRED TO THE DEPARTMENT OF CONSUMER AFFAIRS?

BACKGROUND: In 1993, the Assembly Consumer Protection Committee held two hearings on how the Board handled many of its most important functions, such as screening contractor license applications, responding to consumer complaints, and revoking licenses when warranted. The Committee released a report in which it charged that the Board had been "critically deficient" in protecting consumers from unscrupulous or unqualified contractors. The Committee directed the Board to make immediate and long-term changes to address these problem areas.

During the review of CSLB in 1996, the JLSRC found that there were steps which the Board had taken over those three years to deal with some of the major problem areas identified. The JLSRC and the Administration concurred that contractors should continue to be regulated, and that CSLB is the appropriate entity to engage in that regulation. Inherent in that conclusion was the belief that the Board was performing its administrative responsibilities well or better than any reasonable alternative, and that transfer of the program to be administered directly by the Department of Consumer Affairs, without an appointed Board, was not warranted.

However, the JLSRC did identify a number of issues and problem areas for the Board to deal with, and accordingly made recommendations for the Board to implement. The Board has made attempts to deal with some of these issues, but there are still several issues which remain unresolved. Whether or not to continue with the regulation of contractors by the CSLB, rather than having the Department administer this program, would depend on how responsive members of the JLSRC believe this Board has been to prior issues and concerns raised by this Committee, and how committed it will be to resolve current issues and problem areas identified in this paper.

Of primary concern is the confidence which consumers have in this Board to deal with their complaints in the future. Although this is difficult to assess, the Board has at least conducted a consumer satisfaction survey to monitor the effectiveness of its activities since 1993. (It should be noted that it was the first board to do so. This survey has been used as a model and is required by the JLSRC for every board reviewed.) Based on the results of this survey, CSLB still has some improvements to make in dealing with consumer complaints. In 1998, only about 64 percent of complainants to the Board were satisfied with the service provided by the Board. However, this is an improvement from prior years and is certainly in stark contrast to health-related boards which usually have about a 30 to 40 percent approval rate.

The Board should summarize the efforts it has made to improve its overall effectiveness and efficiency to operate more in the public interest. It should also indicate its future commitment to resolve particular issues identified by this Committee.

QUESTION #14 FOR THE BOARD: *Why should this Board be continued? Summarize what changes have been made to the current regulatory program since its last review to improve its overall effectiveness and efficiency so that it may operate more in the public interest. Why couldn't a bureau under the Director of the Department of Consumer Affairs, with an advisory committee from the profession, administer this licensing program more effectively and efficiently than the current Board?*